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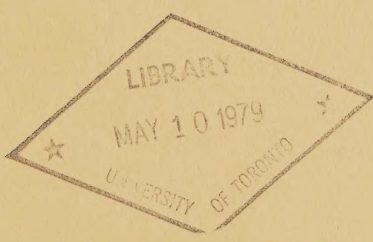
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Commission on Freedom of Information and Individual Privacy

Access to Information: Ontario Government Administrative Operations



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ACCESS TO INFORMATION:
ONTARIO GOVERNMENT
ADMINISTRATIVE OPERATIONS

by Hugh R. Hanson
with the assistance of
Francine Latremouille
and Susan Rowland

Research Publication 6

Prepared for the
Commission on Freedom of Information
and Individual Privacy

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FOREWORD

The Commission on Freedom of Information and Individual Privacy was established by the government of Ontario in March, 1977, to "study and report to the Attorney General of Ontario on ways and means to improve the public information policies and relevant legislation and procedures of the government of Ontario, and to examine:

1. Public information practices of other jurisdictions in order to consider possible changes which are compatible with the parliamentary traditions of the government of Ontario and complementary to the mechanisms that presently exist for the protection of the rights of individuals;
2. The individual's right of access and appeal in relation to the use of government information;
3. The categories of government information which should be treated as confidential in order to protect the public interest;
4. The effectiveness of present procedures for the dissemination of government information to the public;
5. The protection of individual privacy and the right of recourse in regard to the use of government records."

To the best of our knowledge it is the only Commission of its kind whose mandate embraces both freedom of information and individual privacy. The views of the public were embodied in the briefs submitted and in the series of hearings held in ten communities, and covering both Northern and Southern Ontario. In response to public demand, three sets of hearings, widely separated in time, were held in Toronto.

(iv)

The views of the scholars and experts in the field are to be found in the present series of research reports of which this is number 6. These, together with the briefs submitted, constitute the backbone of our findings: the stuff out of which our Report will be made. Many of these stand in their own right as documents of importance to this field of study; hence our decision to publish them immediately.

It is our confident expectation that they will be received by the interested public with the same interest and enthusiasm they generated in us. Many tackle problem areas never before explored in the context of freedom of information and individual privacy in Canada. Many turn up facts, acts, policies and procedures hitherto unknown to the general public.

In short, we feel that the Commission has done itself and the province a good turn in having these matters looked into and that we therefore have an obligation in the name of freedom of information to make them available to all who care to read them.

It goes without saying that the views expressed are those of the authors concerned; none of whom speak for the Commission.

D. C. Williams
Chairman

PREFACE

The Commission's terms of reference direct the Commission to undertake an examination of "present procedures for the dissemination of government information to the public" as a preliminary step in the formulation of proposals "on ways and means to improve the public information policies and relevant legislation and procedures of the government of Ontario".

At an early point in the Commission's work, inquiries undertaken by the research staff of the Commission indicated that there appeared to be no general policy in place concerning access by citizens to documents held by the government of Ontario. The task of describing current practices and procedures thus assumed gargantuan proportions. Consideration of cost implications and other practical impediments led the Commission to conclude that a full-scale survey of citizen access policies in all of the various ministries, branches, agencies and commissions of the government ought not be attempted. On the other hand, it was felt necessary that an attempt be made to provide a firm factual foundation for the Commission's deliberations by preparing a less comprehensive account of current government practice.

The present paper is one of a group of studies which collectively present a description of information activities in a representative sampling of governmental programs and processes. The subject of this paper, Ontario Government Administrative Operations, is in some respects the least manageable of the subjects undertaken by the Commission staff and consultants. As the introductory chapter of the paper indicates, the objective of the paper is to identify typical categories of administrative conduct undertaken on a day to day basis by government in the course of administering its various programs. With respect to each category, a representative sample of agencies engaging in such conduct was selected and an attempt was made to render an accurate description of the kinds of information and documents that are generated in each instance as well as the policies which are currently in force with respect to access. Additionally, an attempt was made in each case to identify problems, if any, which public servants engaged in these processes perceived to be the likely outcome of increasing current levels of access.

Obviously a project of this kind could only be undertaken by someone with a thorough knowledge of administrative practice and a familiarity with the specifics of the machinery of the Ontario government. Fortunately, Hugh R. Hanson, a former public servant who held senior positions in the public service of the government of Ontario as well as the government of Canada, and who now carries on a consulting practice in Toronto, agreed to undertake this work. Mr. Hanson was assisted by Susan Rowland, a student at Osgoode Hall Law School of York University, and Francine Latremouille, a recent graduate of the University of Toronto.

As it may be that readers will read only portions of the report directly related to their specific concerns, it should be emphasized that the account of current practice and the perceptions of those engaged in administering government programs attempts to present an accurate and dispassionate portrayal of the views of those public servants interviewed by the research staff. Needless to say, the views expressed by any particular interviewee may or may not be shared by Mr. Hanson and his associates.

The interviews which form the basis for this paper were conducted between May and August, 1978. It is possible, then, that the various programs and practices examined by the research group may have altered in the period prior to publication of this report.

The Commission has resolved to make available to the public its background research papers in the hope that they might stimulate public discussion. Those who wish to communicate their views in writing to the Commission are invited to address their comments to:

Registrar
Commission on Freedom of Information
and Individual Privacy
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It should be emphasized, however, that the views expressed in this paper are those of the author and that they deal with questions on which the Commission has not yet reached a final conclusion.

Particulars of other research papers which have been published to date by the Commission are to be found on page 156.

John D. McCamus
Director of Research

ACCESS TO INFORMATION:
 ONTARIO GOVERNMENT
ADMINISTRATIVE OPERATIONS

TABLE OF CONTENTS

CHAPTER I	INTRODUCTION	1
	1. Terms of Reference	1
	2. Methodology	3
	3. The Report	11
CHAPTER II	DETAILS OF FILES AND DOCUMENTS EXAMINED	12
	1. Licensing and Regulation	12
	a) Driver Licensing	12
	b) Elevating Devices	16
	c) Nursing Homes	24
	2. Investigation and Inspection	29
	a) Inspection of Nursing Homes	29
	3. Taxation	33
	a) Collection of Succession Duties	33
	4. Contracting	36
	a) Contracting of Construction	36
	b) Contracting of Printing	49
	c) Contracting of Creative Consultants	55
	d) Contracting of Management Consultants	58
	5. Standards Setting	61
	a) Production Standards for Mapping	61
	b) Water and Air Quality Standards	63
	c) Occupational and Industrial Health and Safety Standards	69
	d) Standards for Elevating Devices	70
	6. Research	72
	a) Testing of Highway Paints	72
	b) Water Quality Improvement Research	74
	7. Financial Administration	76
	a) Financial Management of the Nursing Home Inspection Service	76
	8. Program Delivery	81
	a) Capital Grants Program for Ontario Farmers	81
	b) Administration of Grants Program to the Arts	83
	9. Intergovernmental Programs	90
	a) Cooperative Programs for Development of Bilingualism in Education	90

	b) Certification of Teachers from Other Provinces	92
	c) Provincial Municipal Water and Sewage Programs	93
	10. Summary of Findings	96
CHAPTER III	ANALYSIS	99
	1. Information About Businesses Supplied by Them	99
	a) Public Interest Considerations	104
	b) Considerations of Competitive Harm	106
	2. Information About Businesses Generated by the Government	107
	3. Information About Individuals Supplied by Them	112
	a) Administrative Considerations	114
	b) Privacy Implications	115
	4. Information About Individuals Obtained by the Government	119
	a) Administrative Considerations	121
	b) Privacy Implications	121
	5. Other Government Documents	126
	a) Construction Contracting Documents	127
	b) Contracting for Personal Services	130
	c) Federal-Provincial Bilingual Program	132
	d) Ministry of the Environment's Dealing with Municipalities	133
	e) Developing Industrial Health and Safety Standards	135
	f) Highway Paint Testing	136
	g) Nursing Home Licensing and Regulations	136
	h) Financial Management and Accounting	137
CHAPTER IV	CERTAIN ISSUES	140
	1. Legislation or Administrative Policy	141
	2. Legislation or Administrative Directive	142
	3. How Much Access Should Be Allowed?	145
	a) Classified Documents Concerning National Defence and Foreign Policy	146
	b) Internal Personnel Rules and Practices	146
	c) Information Exempt Under Other Laws	147
	d) Confidential Business Information	148
	e) Internal Communications	148
	f) Protection of Privacy	151
	g) Investigatory Files	151
	h) Information Concerning Financial Institutions and Concerning Wills	153
	4. Information About Information	153

CHAPTER I

INTRODUCTION

1. Terms of Reference

This project group was asked to study and report on opportunities for increasing access to information about the operations of the Ontario government. Specifically we were asked:

a) To look at the sorts of information and documents the government collects, generates or uses in the on-going process of:

- 1) Licensing and Regulation,
- 2) Investigation and Inspection,
- 3) Taxation,
- 4) Contracting,
- 5) Standards Setting,
- 6) Research,
- 7) Financial Administration,
- 8) Program Delivery,
- 9) Intergovernmental Programs.

b) To determine the type and function of the documents, records, manuals, guidelines and standards used in carrying out each of the functions listed above.

c) To develop criteria for evaluating the degree to which access to specific document types is feasible and desirable.

d) To consider and develop arguments for the impact of liberalized access on:

- . the efficiency and effectiveness of government;
- . the quality of operating information obtained from the public;
- . the privacy of individuals and others supplying information for use in government operations;
- . the quality of operating information used by government;
- . records management activities.

e) To collect information on the extent of inter- and intra-governmental transfers of operating information.

f) To determine appropriate access policies for different departments and operations.

g) To determine whether generalized regulation and/or legislation is appropriate.

We were asked to restrict our investigation to the on-going operations of government ministries, and to avoid duplicating the investigation of policy-making processes and most government agencies and corporations carried out by other project groups of the Commission's research program. Similarly, we were asked to cooperate as closely as possible with Commission staff engaged in studies relating to privacy protection,

commercial information and government information services. We were asked to prepare a report for publication covering items (a) to (g) but not including specific recommendations.

2. Methodology

The nine functions identified in our terms of reference are rough categories of activity that were selected to encompass in toto the main sorts of things the government does in the course of day-to-day administration of its programs, exclusive of those activities outside this project's terms of reference. In its catalogue of government programs Management Board has approximately 150 programs and 600 activities (activities are sub-programs). Many of the activities are further divided into sub-activities. Clearly, then, it would have been impossible for this project to examine all the many programs and activities of the government -- even if it had been thought desirable.

The first problem facing the project, therefore, was to select a sample of government functions that would be as representative as possible of similar work undertaken throughout the whole of the organization. Accordingly, we took each of the nine functions in the terms of reference and, with the assistance of others in the Commission and of senior civil servants, chose a number of activities that we think raise the sorts of issues concerning the information used and collected that similar activities in other branches and other ministries do. In many instances we sub-divided the functional

categories of our terms of reference, since the subject matter of the functions varies widely, and the likelihood is that substantially different issues would be raised in considering the implications of the release of the material collected and used in the different processes.

The first category, "Licensing and Regulation", we sub-divided into three, making a distinction between programs affecting individuals, machines and businesses. It was our assumption that the problems of personal privacy, commercial confidentiality, government efficiency, and so on, could be significantly different for the information and material used in licensing and regulating each of these three. Many government ministries have a licensing and regulating function, and the three we chose to examine in detail were chosen to be as representative as possible of the others in terms of the issues raised by possible release of the information gathered.

The "Investigation and Inspection" function is also one carried out by several ministries. Some of those were looked at in the course of examining activities under other heads. We chose to deal specifically with nursing homes primarily because it gives continuity to the examination of the licensing and regulation function already dealt with. We think that issues raised by other investigation and inspection activities are picked up in other parts of the report (excluding, of course, investigations undertaken in the course of criminal law enforcement, which was excluded from our purview).

Contracting is a major function of government administration, with large and small contracts being let for a variety of purposes throughout the whole administration. In order to cover the range of this activity, we sub-divided it into four, each of which has somewhat different characteristics. The categories chosen were construction, goods, and personal services, with the last divided into contracting for creative consulting services and for management consulting services. We looked at activities in three different ministries in this regard. Since procedures governing the contracting process are laid down by Management Board, and since substantial issues are raised in considering the material we looked at, we think that our sample for this important activity is sound.

Like any large organization the government must set standards for its own internal administrative purposes. As a government, however, it must also set standards that affect private individuals and organizations and other governmental bodies. To ensure that a good coverage was obtained, we chose one process of internal standard setting, and three that affect people outside the government. Using such widely different subjects as air and water quality, industrial health and safety, and elevating devices, the sample should be wide enough to serve the purpose satisfactorily. Municipal governments, private corporations both large and small, and individuals are all involved in the processes at some point, and are all affected by the standards that result.

Many ministries are involved in one kind of research or another. Much

of this work is undertaken in the course of policy development and is, therefore, outside the terms of reference of this project. Similarly, the Ontario Research Foundation, which is specifically devoted to this function, is outside our purview. We chose two examples to study; one undertaken for strictly internal program purposes, and one that affects people outside the government. The latter was chosen to follow on from one of the examinations we made in the standards setting process.

The management and accounting for money is, of course, a function of all parts of the government. Since the budgeting process is an essential element of the policy development process, we left it to be considered by the Commission's study of policy-making. To see the whole range of documents used in this process we started with one organization unit we had looked at for other purposes and followed the trail of documents up through the ministry and throughout the government. The choice of starting point was quite arbitrary, but is thought to matter little since standard procedures are followed throughout the government.

The heading "Program Delivery" in our terms of reference could, of course, refer to several of the processes we studied under different heads. Since the whole area of providing grants is not otherwise covered, however, we looked at two quite different granting programs through which grants are given to a wide variety of individuals and organizations, both commercial and non-profit. The number of issues raised by the material we examined makes us confident that the examples chosen are very useful for this purpose.

The final heading for examination is "Intergovernmental Programs". Since much of the government's activity in regard to other governments is in discussions and negotiations, it is an essentially policy-making process and outside our terms of reference. There are, however, a number of on-going programs undertaken by the Government of Ontario in conjunction with other governments. For our sample we chose one program with the federal government, one process requiring on-going relations with other provincial governments, and one program affecting Ontario municipalities.

We are confident that, having looked at the documents collected and used in the course of performing so many different functions in so many different ministries, we have had an opportunity to examine a full range of issues that can be raised in considering the implications of increasing access to the material the government uses in the process of administering its ongoing activities.

The actual programs examined are the following:

- 1) Licensing and Regulation of:
 - a) Individuals:
 - . Driver Licensing by the Ministry of Transportation and Communications
 - b) Machines:
 - . Elevating Devices by the Ministry of Consumer and Commercial Relations

- c) Corporations:
 - . Nursing Homes by the Ministry of Health.

- 2) Investigation and Inspection:
 - a) Nursing Homes by the Ministry of Health.

- 3) Taxation:
 - a) Succession Duty by the Ministry of Revenue.

- 4) Contracting for:
 - a) Construction:
 - . Buildings by the Ministry of Government Services
 - b) Goods and Materials:
 - . Printing by the Ministry of Government Services
 - c) Personal Services:
 - . Public Relations Consultants by the Ministry of Energy
 - . Management Consultants by the Ministry of Culture and Recreation.

- 5) Standards Setting for:
 - a) Internal Administration:
 - . Cartography Standards in the Ministry of Natural Resources
 - b) Activities Outside the Government:
 - . Water and Air Quality Standards by the Ministry of the Environment

- . Industrial Safety and Health Standards by the Ministry of Labour
 - . Elevating Devices by the Ministry of Consumer and Commercial Relations.
- 6) Research for:
- a) Internal Programs Purposes:
 - . Testing of Paint for Highways by the Ministry of Transportation and Communications
 - b) Policies Affecting Activities Outside the Government:
 - . Water Quality Improvement Research by the Ministry of the Environment.
- 7) Financial Administration:
- a) Nursing Homes Inspection Service Expenditures of the Ministry of Health.
- 8) Program Delivery to:
- a) Individuals:
 - . Capital Grants to Farmers by the Ministry of Agriculture and Food and Individual Grants by the Ontario Arts Council
 - b) Groups or Corporations:
 - . Grants by the Ontario Arts Council.

9) Intergovernmental Programs:

a) Federal-provincial:

- . Bilingual Program under the Ministry of Education

b) Inter-provincial:

- . Teacher Certification by the Ministry of Education

c) Provincial-municipal:

- . Water and Sewage Programs of the Ministry of the Environment.

For each of the programs mentioned, interviews were held with the people involved in administration. In some instances, these interviews were conducted in concert with researchers from other project groups. The purpose of these interviews was to identify the documents and information used in the process of administering the program, to determine the extent to which access is currently available to them for the public and others, and the reasons for the present access policy, and to assess the implications of any possible changes in that policy. A report was prepared on each program, and was sent to the people interviewed to check for completeness and accuracy. Without exception we received excellent cooperation from program administrators.

In some instances, where civil servants mentioned attitudes held by people outside the government as justifying access policy, we were able to verify those opinions through interviews with people in industry. This was done on our behalf in some instances by another of the Commission's project groups.

Discussions were held within the project, with members of the Commission staff, and with others, about our findings.

3. The Report

This report contains a summary description of the files and documents we examined in the course of looking at the representative programs we chose. It also describes the present policies that pertain regarding access to that material, and the reasons for those policies as described by the civil servants administering the programs. In addition, we analyze the probable implications of changes in those policies from the points of view of the administrative impact and the public interests that might be served by freeing access. In accordance with our instructions from the Commission, this report does not contain specific recommendations: it is intended to be a background document that should assist the Commission to assess the specific implications for the operation of the programs of the government of Ontario of the various policy alternatives it will have to weigh in the course of arriving at its recommendations. It is our hope that the detailed information contained in this report will contribute to the factual base on which the Commission will build its conclusions and recommendations.

CHAPTER II

DETAILS OF FILES AND DOCUMENTS EXAMINED

In this chapter we provide a summary of the documents we examined during the course of our study. For each class of document we identify the access policy that now pertains, if any, and the reasons given to us for that policy.

1. Licensing and Regulation

a) Driver Licensing: Ministry of Transportation and Communications

Ontario driver license files contain information on approximately two million drivers.

Application Form: There are three different application forms for an Ontario driver license: regular (white), controlled (gold), and school bus (yellow). The type of licence issued depends on the class of vehicle to be driven by the applicant. There are seven separate classes of vehicle.

The forms contain information on the name, address, height, sex, date

of birth, and colour of eyes of the individual. In addition to this identification information, the form asks for declarations with respect to medical condition, past driving suspensions and past or present licensed status. The School Bus Application has space for details of the mandatory Driver Improvement Course taken by the applicant.

The back of all forms contain space for ministry personnel to note results of driving tests, preliminary exams, out-of-province license suspensions, identification data, and similar information. On the regular application, there is space for a parent or guardian to consent to a minor obtaining a license.

Access: Ministry personnel. Information from the form is fed into the computer, and access is as described below.

Computer File: The computer file consists of two parts: driver control, and driver licensing. The driver control file contains the regular identification data obtained from the application form, the driver's license number (which is unique to each individual, containing a code of name, sex and birth date), and details of contraventions of any provision of a statute relating to the operation of a motor vehicle. Contraventions of local ordinances such as parking violations are not kept on file.

Access: On request, police and Crown counsel are given five years prior driver control information about an individual. All other inquiries are given three years information on payment of a fee. Altogether, insurance companies, employers, individuals, the Motor Vehicle Accident Claims

Fund, other governments, the provincial courts (particularly for their unpaid fines program), the Ministry of Community and Social Services, and the Ministry of Government Services' Central Collection Service make about three million requests for information each year.

Under Section 20 of The Highway Traffic Act, authority is given to the ministry to record an absolute discharge or conditional discharge under sections 234, 236 or 662.1 of the Criminal Code "as if the person were convicted of the offence". This provision appears to defeat the intention of the federal provision regarding discharges, and is interesting in light of the fact that such information is sold by the ministry for a fee.

The driver licensing file contains the above information together with a driver's previous addresses.

Access: This information is restricted to government, courts and law enforcement agencies, although exceptions are being made for lawyers and insurance companies when they are concerned with a matter involving a motor vehicle. There are approximately 40,000 requests for this information each year. In 1975, 7,781 searches of this nature were completed for lawyers, and 211 for insurance companies.

Criminal Record File: When a school bus driver licence application is received and subsequent examinations are completed successfully, the ministry asks the Ontario Provincial Police Criminal Record Branch to determine if the individual has a Criminal Code conviction for a morals

charge or for trafficking in and/or use of drugs.

Access: The ministry will not release this information.

Medical File: Although the medical suitability of an individual is noted on the computer file, no actual medical information is noted. Medical data is collected if an individual informs the ministry (either directly, or by declaration on an application or renewal request for a licence) that he has a condition that must be evaluated before a licence will be issued. Individuals over 80 and drivers of controlled classes of vehicles must be medically tested on a regular basis. Individuals over 70 may also be required to take a medical test if their driving record indicates that this is necessary. Under the Act, there is also a mandatory requirement that a physician or optician/optometrist report medical impairment to the ministry if it is thought that a condition is likely to impair the patient's driving ability.

When medical information is required, the driver is sent a Driver's Medical Examination Report, which is completed by his physician. This document is filed with the ministry, where it is evaluated in the process of deciding whether to issue or renew a licence or not.

Access: Confidentiality of medical data is protected by the Act. The ministry cannot release medical information to anyone, including the individual, since the form comes directly from the doctor. If the individual is denied a licence and appeals to the Medical Advisory Board, and the Licence Suspension Appeal Board, then the relevant medical

data will be given those boards.

Collision Reports: Collision reports with detailed information on accidents are sent to the Registrar by the investigating police force.

Access: A request form is provided to an inquirer who is able to state the date and location of the collision. Information is usually requested by lawyers, courts, police, insurance adjusters, etc. Requests from people in the private sector are filled after payment of a fee.

b) Elevating Devices: Ministry of Consumer and Commercial Relations

The Elevating Devices Branch is responsible for the administration of The Elevators and Lifts Act and its Regulations. The licensing function includes the approval of drawings for all elevating devices. Regulation is in the form of periodic spot inspections by ministry inspectors.

The Elevators and Lifts Act and Regulations: The Act sets out in detail all aspects of the regulation of elevating devices, sets safety standards, fees and penalties. It is from this Act that the Elevating Devices Branch derive their authority and operating guidelines.

Initial Licence Application Form: This application is submitted by any contractor who is going to install an elevator and must be accompanied by design drawings and engineering specifications. The application gives the name and address of the applicant (owner, tenant, agent, other),

type of installation, location of installation, owner of premises and his address. The bottom of the form is for internal use only and records the inspection date, acceptance date, capacity of elevator, installation number, receipt number, cash book number, etc. There is also space for remarks of personnel who are involved in licensing. At present there is no public access to these documents as the design is considered to be the submitter's business. There are occasional requests from other contractors for information regarding competitors, but they are told to go to the owner or designer to get the information. Granting access would not impair the function of the Elevating Devices Branch itself because submission of documents is required by law. Concern was expressed, however, about the impact on the elevator industry -- release of designs would give away design innovations to competitors.

Contractor Registration Application: It is not only mandatory that elevating devices be licensed, but that the contractors installing devices must be registered with the Technical Standards Branch of the Ministry of Consumer and Commercial Relations. The form used for this purpose details the company officers, their areas of responsibility, background and technical qualifications. It indicates whether a professional engineer is directly employed by the company or on a consulting basis, and gives the minimum employment standards (qualifications) of the various employees involved in the installation process. The applicant also has to indicate what type of equipment will be installed and whether he will be involved in maintenance as well. Knowledge of the standards governing the industry is to be indicated as well (this includes The Elevators and Lifts Act and Regulations, Ontario Hydro Code,

Ontario Building Code, Platform Lift Standards and four others). The form is marked confidential and at present is not released to anyone. The registration must be renewed each year and a fee is charged to the applicant based on the number of employees working for the company.

Inspector's Report: This form is used by elevating devices inspectors to indicate compliance or non-compliance of the device to the Acts involved (The Elevators and Lifts Act; The Construction Hoists Act). This form contains information regarding the location, owner and manufacturer/supplier of the device. It further indicates whether the device meets safety standards or if it is to be shut down, is to have licence issued/reinstated, etc. In short, the Inspector's Report form is set up for both initial inspection before licensing and periodic surveillance reports. The form includes space for the detailed description of Act or Regulation infractions and directions to the owner to bring the device into conformance. The initial report is left with the builder, and directions, if any, must be complied with before the elevating device can be put into operation. A reinspection is done if it is considered necessary. If there are no directions then the device is issued a licence. Subsequent reports are sent to the owner of the device who must complete the directions of the inspector (within a specified time if the faults are a hazard). If a serious hazard condition is found at any regular inspection, an elevating device may be closed down at the discretion of the inspector and must be reinspected before being used again. Requirements for minor repairs are not followed up. Inspection schedules are determined by the Chief Inspector. Inspections on well-maintained elevators will be done every couple of

years, while the 8% poor range (discussed below) are done monthly.

Access: At present there is no public access to these forms. There are problems currently with lawyers acting for purchasers requesting release of inspection reports. The branch refuses to release these as they are considered to be information that is strictly the owner's business. Information will be released on the receipt of a signed waiver from the owner, otherwise the purchaser is told to obtain the information from the owner. If there is some evidence of deceit they will sometimes show the reports in the office, but will not allow copies to be made.

Officials interviewed think that there is also a possibility that the information in the reports may be misleading to or could be misused by the public. A direction to fix something may not mean that there is a serious problem. If it is only minor there is no follow-up -- thus no report saying repair was done. Thus two consecutive reports regarding the same fault might mean that repair had not been carried out; but it could also mean that it had been done and had gone out of adjustment again.

Maintenance Standard Report: This report is used by special inspectors and is a purely internal report. It contains more subjective material (i.e. contains more personal opinions) than do the other reports. These reports are designed for the 8% of elevators that are deemed by senior branch personnel to be liable to poor maintenance and/or high vandalism. This report shows the maintenance level of the elevators

as well as of the building itself, and contains the opinions of the inspector as to the attitude and knowledge of the owner and superintendent regarding maintenance of the elevating devices located on the premises. These reports can lead to action against either the owner or the maintenance contractor. The action may take the form of a warning with a threat to close down the device if compliance is not forthcoming, or it may take the form of legal action if it is in contravention of legal requirements set out in the regulating Act.

Access: Access to these reports is highly restricted. Nobody is allowed to see them except senior management and the engineering division in the branch. Not even the regular inspectors have access to them. We were told that if more access were to be allowed the branch would discontinue the reports. It is thought that the inspectors would be unwilling to put down subjective remarks if these could be seen by everybody. It was said that there would be an outcry from those being subjected to such monitoring on the ground that they were being unfairly abused. The reports are used as a lever to try to maintain safety in marginal buildings, and it is believed they would lose their effectiveness if public access were granted.

Monthly Maintenance Survey by Contractor: This is a list of inspection report summaries on each contractor based on material from the detailed Maintenance Standard Reports. This gives the date and number of each inspection, type of contract (construction or maintenance) involved, and remarks.

Access: These reports are not released at present. Their primary use is for quick reference and general overview of contractor status.

Monthly Maintenance Survey (Summary): This is compiled from the previous Contractor Summary form and gives a general overview of inspection performances for all contractors. It shows the contractor's name, type of contract, number of inspections for each type of contract, and performance level of the contractor.

Access: There is no public access allowed at present. This again is kept for purposes of quick reference and general overview of all contractors' performance.

Complaints and Accident Investigation Reports: Complaints generally come in by phone and are then passed on to an inspector. The device will be inspected and a report of the inspection put on the file. If there is something wrong then the owner will be informed, but he will be given no details of the complaint.

The accident report is a detailed form giving details of the accident, the type of installation, results of investigation of the elevating device, insurance involved, statements of witnesses and others, and the inspector's remarks.

Access: These reports may or may not contain subjective material, and are considered to be purely internal. The problem with release of these documents would be the necessity for proving the validity of subjective

comments. Currently there is no access to any investigator's report on an accident except to the insurance investigator or the owner, who will not be allowed to have a copy of the report. He will only be allowed access to view the document in the branch office. The Elevators and Lifts Act states that insurers of an elevating device may obtain a copy of the accident report with permission from the owner of the device. Officials interviewed were not sure whether access should be allowed, but if they were told to release it they would. At present documents as well as branch staff can be subpoenaed by the court, so there is legal access to the reports at the discretion of the courts. Staff are not allowed by the branch to be subpoenaed as expert witnesses, however. They tell lawyers to go to outside consultants as they believe it is not government's role to act in this manner.

Transfer of Licence and/or Change in Information Application: This form is used to register a change in information regarding the owner or a change in owner of an elevating device. A licence will not be transferred until all fees are paid, and these fees and a transfer fee must accompany the application. Transfer of a licence means the issue of a new licence. This form contains the name of the current owner, the changes to be made in the current information held or the name of the new owner, and the fees due to the government.

Elevating Device Licence: This contains the installation number, name of owner, location of elevating device, and the expiry date of the licence. This is the form appearing on the elevator. Recently the form style has been changed, and as each licence is renewed the new form

will replace the old.

Correspondence: There are two types of correspondence carried on by the branch: one is highly technical and involves standards development; and the other contains information regarding installations. The latter are filed by location (address) and cross-referenced by installation number. The basic information is kept on microfilm, the rest is kept in hard copy. These files contain requests from lawyers for information regarding status of elevators, which are not on standardized forms. They also contain reports of complaints and warning letters to contractors to induce compliance to requirements. Correspondence generally concerns attempts at resolving problems on a particular installation. Otherwise the only information contained in the files is on the forms already discussed above.

General Access Policy: The final decision regarding access is made by the Branch Director. In terms of a request for general compilation of data held by the branch (i.e. number and location of elevating devices for market research) he would comply if he could recover the cost of producing it. They do, however, provide information of this sort to the federal government. Also, in the interests of promoting Ontario tourism, they compiled a list of all the ski lifts in the province for a publisher who wanted to put out a travel guide. Officials indicate that an open access would not affect the quality of the information supplied, as the information they gather must be supplied according to law. They do not want inspection reports released because uninformed people interpreting them could create problems. They said that accident reports should be

released only at a later stage of the judicial process where proper interpretation could be better ensured.

The only interest anticipated from increased access is from contractors looking for information to use against competitors, or from tenants to use against landlords. Only requests from vested interests were foreseen -- centering on the inspectors' reports. It is the branch's belief that release would have a disruptive and negative impact as the reports would be used for other reasons than public safety, to the detriment of public safety. If access were to be increased officials estimate that at least one more person would be needed on filing staff.

c) Nursing Homes: Ministry of Health

There are two ways a person may become a nursing home operator in Ontario: by buying an existing home, or by building a new facility. Both require approval by the Ministry of Health.

Buying an Existing Home: If an operator wishes to sell his nursing home, or his licence to operate one, the government must first approve the sale. The first step in this process is a special pre-sale inspection of the facility. This inspection identifies any areas where the home does not comply fully with The Nursing Homes Act and Regulations. Once the inspectors' reports are evaluated, any deficiencies (called Requirements) are either brought to the vendor's attention for his correction before the sale will be allowed, and/or are made a condition of the sale in

that the purchaser is required to remedy the situation before the licence comes up for renewal for the first time.

This inspection report is restricted to ministry personnel and the vendor. The vendor is given a copy of the Requirements, but is only permitted to look at the inspectors' reports if he requests to do so. If a purchaser is required to agree to remedy specific deficiencies, he is given a copy of those Requirements that pertain to him. In some cases a purchaser has been given a copy of the relevant inspectors' reports on the home. Solicitors acting for either party or the mortgagee are denied access to these documents, and are told to seek information from their clients.

Part of the approval process involves screening the prospective purchaser. An internal group called the Pre-Sale Interview Committee composed of various experts in nursing home matters within government meets with the applicant to review his proposal. The Committee is provided with information from the local District Health Council (if there is one), a letter from the applicant's banker, his Dun & Bradstreet rating (where applicable), the selling price of the home, a letter from the mortgage company(s) confirming the method and amount of financing, pro forma balance sheet and projected income and cash flow statements, a confirmation of his bank balance, copies of incorporation documents (if applicable), any information culled from branch files or inspectors indicating past experiences with the prospective purchaser (if any), and a completed application form accompanied by the \$10.00 licence fee.

Application Form: In addition to the names and addresses of the home,

the prospective operator(s) and the administrator, the form asks for information on criminal convictions (if any) of the applicant and administrator, whether or not the applicant owns the home or intends to own it, the name and addresses of the advisory and emergency physicians, and details of nursing home staff with respect to their job function, registration number (in the case of RNs and RNAs) and the number of hours each person will work per week. The form also requires information on whether or not the home admits persons eligible for admission to a licensed nursing home under The Homes for Special Care Act, and if so, how many residents are admitted.

The Committee reviews this information and then either recommends approval or denial of approval of the sale to the Director.

Access is restricted to ministry personnel and the purchaser. Neither the vendor nor the vendor's solicitor, the mortgagee nor the purchaser's solicitor is given access to this information by the branch.

Building a Nursing Home: Since extended care costs increase directly with the number of nursing home beds available, that number is carefully controlled. Consequently, the government studies the need for increased capacity in a particular area, receiving input from the local District Health Council (if there is one), from the local hospital(s), and from the Data Development and Evaluation Branch of the ministry. It is the Ministry of Health that makes recommendations for expansion of these facilities. Once Management Board has approved an expansion proposal from the ministry, the Nursing Home Service prepares "proposal documents",

which are an invitation to tender. The invitation to tender is publicized through advertisements in the local newspapers and by informing the Ontario Nursing Homes Association.

Access: Proposal documents are handed out at a public meeting, or sent to an inquirer on request.

When the prospective operator submits his proposal, he must provide substantially the same financial data as in a sale situation, the organization and qualifications of the management staff together with appropriate letters of reference, and a statement of the estimated cost of the facility with supporting quotes from contractors, suppliers or reviews of recent market transactions. In addition, the proposer must identify the key events and elapsed time from official notification of the award of the licence to full occupancy of the home, a statement of the operational philosophy and program goals of the new facility, and sketches of the proposed home. The identity of all parties responsible for the proposal must be disclosed, together with a certificate of incorporation (if applicable).

An internal ministry group called the Extended Care Committee (and a member from the local District Health Council, if it chooses to participate) review the tender submissions and a sub-committee is struck to interview selected applicants. Once an interview with an applicant is completed, each element in his proposal is rated according to a pre-determined scoring system. When the interviews and rating are complete, a recommendation is made to the minister, who makes the final decision

regarding the successful applicant.

Access: Both the tender proposals and the scoring system are restricted to those participating in the Extended Care Committee and branch personnel.

Nursing homes must conform to the Ontario Building Code, the requirements of the Fire Marshall, any local ordinances, and The Nursing Homes Act and Regulations.

Nursing Home Plan Assessment Schedule: The planning consultant at the Nursing Home Inspection Service screens the architect's drawings and follows the progression of the building to ensure conformity with the legislation. The Schedule is an internal document that serves as a check-list for the planning consultant. Any deficiencies in the plans are communicated to the operator through his architects, and requirements to conform are made.

Access: The Schedule is restricted to ministry personnel. Deficiencies that the Schedule points out are sent by letter to the operator and/or his architect.

Once the building is completed, a pre-licensing inspection similar to the pre-sale inspection is carried out by the nursing, environmental and fire inspectors.

Access: Same as the pre-sale inspection.

If the inspection reports are satisfactory, a licence is issued in return for the receipt of a fee.

2. Investigation and Inspection

a) Inspection of Nursing Homes: Ministry of Health

Inspections: The Nursing Home Inspection Service makes unannounced relicensing, complaint, team, and follow-up inspections. These are carried out by nursing, environmental and fire inspectors.

Relicensing: Once a year prior to renewal of its licence, each home is inspected. Each of the three inspectors visits the home and completes an inspection report. Basically, each report calls for filling in the name of the nursing home, its address, the date of inspection, and the name of the inspecting officer. In addition, sections of the Act and Regulations are listed, and questions are asked on the form to which the inspector must answer either "Yes" or "No" to indicate whether or not the Act and Regulations have been violated.

The Nurse Inspection Report covers not only nursing care, but also patient composition by nature of disability, and an analysis of the deployment of staff, a weekly time sheet, life-style or activation activities, financial records kept for the patients, patient files, personnel files, medication systems, dietary services, the call system,

nursing stations, laundry supplies and nursing home furnishings, and staff facilities. In addition, there is a two-page sheet at the beginning of the report that allows for general remarks.

Access is restricted to ministry personnel, the operator and the administrator of the home. A copy of the report is not left, nor is one made available to the home. Usually, however, the reports are discussed with the administrator, who signs the report to indicate that he has seen it, and the operator may see the report by visiting the Nursing Home Inspection Service.

Complaint Inspections: When someone has a complaint against a nursing home operator, the Service investigates immediately. The complaint (preferably submitted in writing) is forwarded to the appropriate inspector at the nearest regional office to the home. The inspector visits the home (taking as much care as possible not to identify a complainant during the course of the visit), and then prepares a detailed memorandum to the Chief of the Service. If the complaint is found to be justified, the inspector may issue Requirements (discussed below).

Access: Complaint inspection reports are restricted to ministry personnel only. Although an operator may examine his file at the ministry, he is never given access to any complaint documentation. The complainant is also denied access, but is informed in a general way by letter what action has been taken. Little detail is given in such letters.

Team Inspections: As many as two inspections a month by all three

inspectors (and if necessary an activationist or a dietary consultant) are carried out on homes identified as problems. This indicates the seriousness with which the Service views the situation. Continuous bad reports can result in prosecution or revocation of the licence.

Access: Access to the reports of these special inspections is handled in the same way as to relicensing inspection reports.

Follow-up Inspections: A follow-up inspection is undertaken to ensure that problem areas brought to the attention of the nursing home operator are corrected within a short period of time. Unlike the other inspections, a follow-up inspection concentrates on a particular area previously identified as being of concern to the Service.

Access: These reports are handled similarly to other inspection reports.

Requirements: If one of the inspecting officers finds a home in violation of the Act, a directive to comply on Form 1642-59 (2/77) is given to the operator. Failure to comply is grounds for revocation of the licence, or prosecution under the Act.

Access: The operator and/or administrator of the home get a copy of the Requirements. Apart from them, only ministry personnel can see them.

Financial Consultant Reports: The financial consultant reviews patient accounts in a nursing home when requested to do so by the nursing inspector, when a complaint is made, or as part of a financial "spot

check". A memorandum of his findings is sent to the Inspection Service. If there are serious problems noted, the matter is referred to the ministry's audit branch, who then audit the facility. In cases of suspected fraud or other illegal activity, the audit branch notifies the legal branch of the ministry and the Ontario Provincial Police.

Access is restricted to ministry personnel only. If the Public Trustee has made a complaint, however, a copy of the consultant's memorandum is sent to him.

Form 4372-94 (1/77): Each home must submit a quarterly financial report on this form. Information from these reports is aggregated and used to compile a statistical report on gross revenues, gross margins, fixed costs, residential care salary cost, administrative salary costs, food costs, registered nursing costs, percentage occupancy, and so on. The aggregate is compiled on the basis of median figures, and not averages. The form is designed to be compatible with the information required by Statistics Canada on its annual reporting form sent to the nursing homes. As a service to the nursing home operators, the ministry completes the financial information section of the Statistics Canada form and sends it to Ottawa.

Access: The aggregate data are provided to TEIGA, the Ontario Nursing Homes Association, and on request to mortgage companies. No specific information is given with respect to any individual home. Access to Form 4372-94 (1/77) is restricted to ministry personnel.

Miscellaneous Incident Report: Whenever a serious incident occurs in a home, such as a fire or a death, the Service receives a copy of the Incident Report filled in by the home. All facilities and serious incidents that could have resulted in a fatality are immediately investigated by the Service, and a report is prepared on the situation, which includes any appropriate recommendations for remedial action.

Access: This report is kept confidential within the ministry.

3. Taxation

a) Collection of Succession Duties: Ministry of Revenue

Succession duties are levied on the taxable property a person leaves when he or she dies. Some estates are either totally or partially exempt from taxes, depending upon the value of the estate, and the relationship of the beneficiaries to the deceased. One of the responsibilities of an executor or administrator of an estate is to report to the government taxing authority what property the estate contains, so that the ministry may assess the estate and determine its tax liability, if any.

Succession Duty Return: The Return (either long or short form) in effect re-creates the financial life of the deceased for five years prior to death. This is necessary because any gift comes back into the estate for tax purposes if made during the preceeding five years. Accordingly,

the Return contains an inventory and valuation of the deceased's assets, the names and addresses of the beneficiaries with descriptions of their benefits, and a detailed listing of gifts made by the deceased in the five years before death. A statement of outstanding debts may also be received.

In addition, the Branch may also obtain other information for assessment purposes. Such information may include:

- . the deceased's common-law relationship with a surviving person;
- . names and addresses of children whether legitimate or not;
- . details of separation and divorce settlements;
- . adoption details;
- . in support of dependency claims, medical assessments and statements of dependants' income or financial worth;
- . the deceased's income tax returns for the past five years;
- . declarations by beneficiaries touching upon details of family history;
- . with respect to a contingent liability of the deceased, details of bank loans or similar debts of other persons;
- . financial statements of a closely held business in which the deceased had an interest;
- . professional opinions on the future prospects or plans of such businesses;
- . appraisals of real estate and possible indications of the effect of a forced sale by the estate;
- . safety deposit box listings that include not only the assets of the deceased, but also the assets of other persons.

Valuation Report for Succession Duty: The Assessment Division of the Ministry of Revenue may be asked by the branch to evaluate a real property asset of the estate. The Assessment Division sends out an inspector/evaluator, who then fills in this report on the basis of his findings.

Notification of Value: If the Assessment Division places a higher value on the real property than that placed by the estate, this notice is sent out to inform the executor that the ministry is placing its own figure on the property for their calculations.

Certificate of Discharge: This form indicates that all succession duty obligations (if any) have been met, and the ministry has no further interest in the property of the estate.

Application for Re-Assessment: This application may be made only if an event, occurring within four years of the date of death, causes the termination of an interest valued for estate purposes. If the grounds for re-assessment are valid, the value of the estate may be changed for tax purposes.

Access: Under s. 43 of The Succession Duty Act, no access is allowed to the files kept by the branch, except, as is allowed under legislation, to the Estate Tax Division of Revenue Canada. Since The Estate Tax Act was repealed at the end of 1971, however, federal estate tax assessments have been nearly phased out.

4. Contracting

a) Contracting of Construction: Ministry of Government Services

The contracting procedure for government construction is complex and includes five Ministry of Government Services branches, each of which functions differently and independently. Construction programs follow a regular route through most of these branches. Some documentation is common to all branches but most of the information gathered and stored by each pertains to only its own area of jurisdiction. For "major capital projects" there is one file containing the contract documents that passes between the branches, the Deputy Minister and the Minister before it is finally approved. This file is ultimately kept and stored by Contract Control. A coherent file of all transactions that make up a particular construction program would have to be compiled from the records of all branches involved in the contract procedure.

The capital construction programs all originate in Program Management from a yearly survey of all ministries' five year construction proposals. After the development of the general program outline, responsibility for carrying out these programs is divided into two streams. Design Services Branch are responsible for all major capital (over \$200,000) projects and Property Management is responsible for minor capital (under \$200,000) projects. Both branches use Design Services to prepare design drawings and working drawings for projects. In the case of major capital projects, Design Services are responsible for each project up to the completion of

the contract documents -- specifications and working drawings. Program Management Branch put the project out for tender through the Public Tenders Office (PTO). When the tender submissions have been returned and opened, they are checked and the contract award is recommended by Contract Control, a section of the ADM (Accommodations) office.

Supervision of construction on major capital projects is the responsibility of Design Services Branch. In the case of minor capital projects Property Management Branch put the contract out to tender through the PTO, recommend award or make the award (depending on contract value) and subsequently supervise construction. Approval of the contract award is requested by a recommendation from the director of Property Management or the Contract Control Coordinator to the Deputy Minister and then to the Minister. All recommendations must be signed as approved by three people (the head of the supervising section, the Deputy Minister and the Minister) before the contract award can be made.

Ministry Survey Forms: Accommodation Plan Data: This is a series of forms completed by each ministry every year outlining new programs proposed and programs that are already underway, with five-year status projections. The first form of the series is a request for new accommodation. This form gives the classification of the activity to be undertaken (capital, lease or alteration); the location of the required accommodation; the date required for occupancy; a five-year project schedule; tender call date; and cost estimates as a cash flow over five years.

The second form, "Accommodation Project Justification and Related Program

Operating Costs", explains the need for the new facilities and provides possible alternatives, estimates of annual incremental program operating costs, and the status of approval for such costs. The form is signed by the Deputy Minister of the client ministry.

The next form states whether or not the building can be located on government property, or whether new land must be acquired. It also contains information on site condition and size, square footage of the proposed accommodation, and external design requirements. This information is further detailed in a space analysis form provided by MGS Planning and Research Branch. The survey forms are accompanied by any other pertinent information that the client ministry supplies with the request.

A form is also completed stating a ministry's current and/or future surplus accommodation. This includes information regarding proposed date of vacating of accommodation, and a description of the facility and of the services carried out by MGS and/or client ministry in maintaining these facilities.

Next is an Accommodation Plan Summary. This is a summary of all projects already under way in each ministry, the total cost of each project, cash flow projections for five years, and current status of the projects. Each project goes through a number of development stages, but most receive Management Board approval at the following stages before moving to the next stage:

- . client requirements are determined;

- . design drawings prepared:
 - a) completion of definitive report and definitive estimate;
 - b) completion of working drawings;
- . working drawings;
- . tender;
- . construction.

Five-Year Program Book: From the information received from the Accommodation Plan Survey of each ministry a book containing financial data on each ministry's proposed accommodation plan is made up by Program Management. This book shows proposed and current programs and the status of current programs. This book is sent to Management Board for approval of the new projects and continued expenditures on current projects. When Management Board is finished with its approvals, the book is amended accordingly by Program Management and this becomes the approved construction program of the government for the next five years, but reviewed annually. This book is then revised monthly in order to show the up-to-date status of each project. It is an internal document used by staff and senior management.

Access: The information contained in the book could be released but ministry officials think that it could be misleading as the bulk of the projects shown are in the development stage and do not reflect possible new government programs or changes in existing plans. A very large proportion of the projects are cancelled. Unless the purpose of the book and the status of the projects are clearly understood, it could be a very misleading document.

Blue Book: From the finished five year program information another book is compiled, called the Blue Book, summarizing the five-year program, giving the project name and estimated costs. This book is released to MPP's as a statement of proposed government building projects for the five year period.

Architectural Program Agreement -- "The Terms and Conditions of Engagement" Document: When a project has been approved, Program Management appoint a consultant to draw up the architectural program of requirements. The agreement sets out the conditions under which the architect is engaged, how the architectural program is to be prepared, and what the program is to contain.

Architectural Program Requirements: In this book, the requirements the building is to meet are described in great detail. The description includes space standards, furniture quality standards, number of rooms required, use to which rooms are to be put, and number of staff to be accommodated. The design sketch, working drawings and specifications are drawn up with the aid of this book.

Construction Budget: When the program of accommodation is complete and approved it is sent to Design Services. The first step in the design process is the preparation of a Construction Budget by in-house estimators. This budget is then used as a control for the project design. This estimate is not available to the public prior to the tender opening (unless an MPP decides to give his Blue Book to a contractor) in order not to influence the range of bidding. Because ministry estimators

cannot foresee all the considerations for pricing of various parts of the project that will be involved in each tenderer's bid, the bids may be higher or lower than the estimate prepared. The estimate is only a guide and not a hard and fast determination of cost.

Energy Budget: This is a document prepared by the mechanical section of the Design Services Branch, specifying the yearly quota of allowable energy expenditure for heating and lighting of a building. It includes considerations of types of construction, use of body heat and lighting heat as aids to heating buildings, the possible use of solar heating systems, size of windows for lighting, and possible individual switches for rooms so lights may be turned off when sunlight is sufficient.

Instructions to Associate Architects: This is a manual prepared by Design Services as a guide to the architect appointed to do the design and working drawings and to supervise the construction of a project. The book has some variations in instructions according to the project involved. It outlines the entire design and construction process step by step, from the associate architect's agreement to the final award of the contract. The book contains specimens of all forms that are to be used in the process, as well as detailed instructions on how to prepare the architectural documents required for a building project.

Architectural Agreement: The agreement specifies the terms and conditions under which a design architect is appointed. The architectural work is not tendered because, according to professional ethics set by the Ontario Architect's Association, architects are not allowed to

compete with each other by price bidding for jobs. Three architects are recommended by Design Services through a committee of three, who investigate architects in the area in which the project is to be built, and the final appointment is made by the Deputy Minister. An architect will not be recommended if he already has a government job underway. The agreement outlines liaison procedures with the ministry and formats for all documentation.

Sketch Plans, Design Report and Definitive Estimate and Alternatives

Report: These documents form one package necessary for the approval of a project. The sketch plans must be approved at various stages of completion in order to ensure that the design meets the client ministry's requirements for space and appearance. Any comments made about the design must be incorporated in the revised design. The Design Report and Definitive Estimate and Alternatives Report accompany the completed sketch plan when it is submitted for Management Board approval. The Design Report describes the building and accommodation, finishes, interior design, equipment (including furniture), and engineering (structural, mechanical and electrical) summaries. The Alternatives Report takes all major aspects of the Design Report and discusses possible alternatives according to quality, requirements and cost. A recommendation is made as to what alternative is preferable according to use (e.g. design of windows in a detention centre, which is determined by need to hold prisoners).

Specifications and Working Drawings: These documents are the basis of, and form part of, the contract documents. These are the documents that

are distributed to the tenderers and on which they base their bids. The specifications give details of all requirements that do not show up on the working drawings, such as quality of material to be used and method of construction. The specifications also contain a copy of the final contract that they will be required to sign, and two copies of the form on which they must submit their bids. When submitted, this tender form contains the names of the sub-contractors who will be used by the tenderer, and unit prices for all aspects of construction. This document is signed by an officer of the tendering company and is accompanied by a Bid Bond (which is returned to all unsuccessful bidders). These specifications and working drawings are then either sent to the Public Tenders Office for pick up by tenderers, or else the Public Tenders Office will indicate (when a deposit is required for drawings) that they are available from Design Services.

Tender Requisition Form: The Tender Requisition Form is sent to the Public Tenders Office by the Program Management Branch if a major capital project, by Property Management Branch if minor capital. It contains the name of the requisitioning agency, the subject of the tender call, the type of tender call (advertised or invitational), preferred advertising dates (if this process is to be used), estimated value of contract, suggested tender closing date, whether a deposit is required for plans, whether a bond is required, and any additional comments or instructions (such as where tender documents can be picked up). A requisition number is assigned by the Public Tenders Office. At least one copy of the working drawings and specifications will accompany this form.

Advertisement: This is composed from the information in the Tender Requisition and published in all local papers where the project is to be built, as well as in the construction trade paper, "The Daily Commercial News". The ad is run for two days, one day apart.

Record of Tender Opening: This is an envelope with all the pertinent information put on a form printed on it. It contains the requisition number, type of tender, opening time, number of tenders received, number of tenders rejected (incomplete or improper submission), the names and addresses of the bidders and the amounts of their bids. The tender opening is public and can be attended by anyone. A photocopy of the Record of Tender Opening will be supplied to those attending the opening. The dates of closings are posted on a bulletin board as are all jobs that are up for tender.

The Public Tenders Office keeps a copy of the Tender Requisition, the advertisement or list of invitational bidders, the tender envelope, and the working documents and specifications. These are then filed according to requisition number. Access to these documents is given to anyone who requests to see them and can identify them so that they can be located. An index to the files is also kept in the form of a book listing the project name and the requisition number. Thus, the documents can be retrieved by project name, but this is more time-consuming.

Recommendation: After the completed tenders have been checked for accuracy and completeness a recommendation form is made out. This lists

the bidders, the amounts of bids, and a recommendation as to which bid should be accepted. If the recommended bid is not the lowest, a very good reason must be given (such as poor quality work on a previous job). This form is signed by the director of the supervising unit and approved by the Deputy Minister and the Minister. Once accepted, the bid is legally binding and must be adhered to. It is a general policy, however, that when errors are found in a tender the tenderer will be allowed to amend or withdraw his tender. The purpose of this policy is to maintain a good government image and to avoid taking advantage of contractors in order to save money. Nor do they want to bankrupt a company on a government project.

Canadian Standard Form of Construction Contract: This is a standard form of contract that is used for all construction work done in Canada and has been approved by the Canadian associations of architects, engineers and contractors. The contract formalizes the contract documents and can be amended to suit particular requirements, but must remain within the general terms of the standard form. This document contains 44 articles that detail the relations between the owner and the contractor, as well as the rights and obligations of each.

Rating of Performance by Contractor: This is a form used by the supervising unit to assess the performance of a contractor. It is broken down into four areas:

- . organization;
- . quality of work;
- . MGS supervision required;
- . recommendations.

The first two sections are rated as being: outstanding, good, satisfactory, poor, or unacceptable. The third is rated as: minimum, normal, or abnormal. The recommendation advises whether the contractor should or should not be used again. A contractor who does a poor job will not be awarded contracts for a period of time (one or two years) and will be notified of the reason for such refusal. The contractor will, however, be given further opportunities to demonstrate improved performance.

Assessment of Architects: Architects are also assessed for performance. This is not put on a specific form, but the quality of work will show up in the liaison with the ministry personnel. The problems arising are usually solved by a discussion between the architect and senior management, and the source of any complaint is not given. Complaints are not generally laid with the Ontario Architects Association, although the Deputy Minister does so if necessary. This is apparently a sensitive area, as the supervising staff are generally architects themselves and members of the OAA. Architects generally do not criticize their colleagues except through procedures taken through the OAA.

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The filing system for all sections is broken down according to ministry, location and project. Each project file could be one file or several files depending on the size of the project. Correspondence is kept in these files and contains letters between the contractors, architects, etc., and the ministry, in relation to projects. Each section (Property Management, Program Management and Design Services) keeps only material pertinent to their particular service. To get a complete picture of any

particular project would require searching files of more than one branch in all cases. The final contract file itself for major capital, containing all tenders, is kept in Contract Control. Another complication arises from the practice of awarding service contracts under \$50,000 by MGS regional offices without approval being required by the ministry head office. The files for these contracts are kept in the regions.

Access: Policy concerning these contracts is to give out all factual data if requested, but not to speculate on ministry policy. Requests are dealt with either orally or by letter. No one person is designated to handle requests, and decisions about replies are left to the discretion of the people involved. Media requests are generally dealt with by the Director of either Program Management or Property Management.

Public access is not allowed to the files themselves, as some material such as assessments of professionals, complaints and opinions is considered to be confidential and the files would have to be culled. Two major problem areas were identified. The first is the confidentiality of assessments and criticisms of the professionals and contractors involved. It is believed that release of this information would inhibit civil servants from making fair assessments. The second major problem would be created by the release of tenders, and the winning tender in particular. Officials think that the contractors would attempt to use this information to gain advantage over competitors, for instance, by releasing information regarding contractor relations with suppliers for special prices, or by losing bidders going over the winning tender to find something to disqualify the winning tender that has been missed by the government.

By disqualifying a low tender, another tender would thus qualify for the contract. This is seen to be a particular problem in a time of slow economic growth, when the amount of construction done is low.

Another concern is a staff problem. The compilation of data can be very time-consuming and complicated. Several branches are involved in any particular project and each branch keeps its own files. In addition, confidential material is mixed in with non-confidential material. It was suggested that if public access were to be allowed, extra staff would be required for each section with in-depth knowledge of that and the other sections' operations. Confidential material could possibly be separated from future files, but it would be very time-consuming to do so for all previous projects. Extra filing staff would also be required to keep track of material released.

The Annual Report published by the ministry lists information regarding construction projects. All major capital projects and minor capital projects over \$50,000 are listed with the names of all bidders and the amounts of their bids. If the low tender is not the winning tender the reason is given (tender withdrawn, poor work previously). Minor capital projects under \$50,000 list the name of the winning tenderer and the amount of the contract only.

For the most part officials consider that access could be allowed to most of the material collected and used by MGS in construction, with the exceptions noted above. The major problems would be time and staff costs. Because of staffing problems some areas find it a burden to

supply detailed information to the Minister for release to the House, though it is necessary, and free access to the public without the increased staff would create a great problem for the efficient operation of the branches involved. It was suggested that the Blue Book prepared for release to MPPs could be expanded to contain more information and released for public consumption on a cost retrieval basis.

b) Contracting for Printing: Ministry of Government Services

Government ministries requiring printing to be done may, but need not, place the order through the Printing Services Branch of the Ministry of Government Services. In a sense, therefore, the branch competes for business.

Graphic Arts Equipment and Capacity Report: Any Ontario printer can ask to be placed on the government list of suppliers. They are asked to complete a form outlining the size of their equipment and the productivity of each piece; gross annual sales; percent of total work that is done for government, export or commercial clients; the number of shifts worked; and union affiliation. From this information, the firms are grouped into categories used in selecting invitations to tender. Periodic updating is accomplished by a general mailing to all printers.

Access: The Ministry of Government Services considers this information to be confidential. It is thought that release of this information would cause the print industry to refuse to supply it and that since the

graphics arts industry is highly competitive, the release of such information might have an adverse effect on the industry itself.

Computer Print-Out of Firms: This is a list of firms according to the various categories they are assigned to and made up from the material in the Graphic Arts Equipment and Capacity Report. It contains information concerning the number of times in a fiscal year a firm is asked to tender, and the number of times it has been successful. There is no way of correlating a firm's category to the specific type of equipment it has without the manual list. This print-out is used to aid in the fair and efficient distribution of invitations to tender and of assigning work orders for those jobs too small to require tenders.

Access: The ministry does not consider this to be a confidential document, and would allow access to it if a request were received. Officials have no recollection of any such request to date.

Forms Suppliers Lists No.s 1, 3 and 4: This is a three-tiered list of companies who print standard forms. It has the name, address and telephone number of each forms printer in Ontario and space for prices and comments. List no. 1 shows printers who supply continuous forms. Lists no.s 3 and 4 are for other types of forms and are based on size and capacity of firms. List no. 2 was deleted as it was felt that the divisions were too fine. A job tendered for forms will be sent to all suppliers listed in the specific category being used.

Correspondence with Ministries: There are general correspondence files

for each ministry. Correspondence regarding tenders and orders is placed in the tender and order envelopes with the rest of the material for filing.

Print Requisition -- Form no. 7540-1038 (6/74): A print requisition is required for all print procurement and for government duplicating services. Usually the requisition is received by Print Procurement and the tendering is done subsequently, although tendering prior to requisitioning is sometimes done when a ministry requests a firm price or estimate prior to requisitioning. Details are usually settled at a meeting of the client ministry representative with Print Procurement staff.

The form includes the name and branch of the ministry requesting the service, its internal account number, a description of the job to be done, and the date required. From this form and any attachments included from the client ministry, Print Procurement draws up the job specifications that are sent to the printers for tendering.

Tender Form No. M.G.S.-293-73: All printing over \$1,000.00 automatically goes to tender. The tender form is composed of seven parts -- one page for each of the six printers asked to tender for a job. Tenderers are chosen by a formula if the job is a repeat of a previous order. The four lowest bidders (or the printer who got the job and the three lowest bidders) and two additional printers taken from the computer list are invited to tender. The printers chosen are always taken from the same or adjacent categories so that they all have similar capabilities for

completing the job.

The tender form includes the job specifications, the name of the ministry for whom the work will be done, the printing requisition number, date of delivery of goods, and tender delivery date. One of the seven pages of the tender contains the names of all the tenderers while only the name of the printer receiving it shows on the others. Until the public tender opening the printers do not know whom they are competing with, only that they are competing with printers of similar capacity. Six copies of the tender are sent to the Public Tenders Office (PTO) for processing. Print Procurement will telephone the tenderers in the event of a short turn-around for the job and inform them that they should pick up the tenders at the PTO. In other cases, the tenders will be mailed to the tenderers by the PTO for return by the tender closing date.

Public access is given to specifications with the names of the tenderers, the requisitioning ministry, and tender price deleted.

Forms Tender -- Form No. M.G.S.-293 (2/78): This form is used to tender for forms. All suppliers on the pertinent list are invited to tender. If a new supply of forms is needed after sixty days from the previous tendering, the job is retendered. If a new supply is required before sixty days are up, they will go back to the firm who won the previous contract and ask for a price. If the price tendered originally cannot be obtained, the job is retendered.

Spread Sheet/Tender Envelope -- Form No. M.G.S.-577-73: This is an

envelope with the spread sheet for tender information printed on it and includes space for the names of the tenderers and the amounts tendered by them. Space for the date tenders were sent to the PTO, date of tender closing and the name of the firm awarded the job are also put on the form. The six copies of the tender form that are to go out to the tenderers are placed in this envelope and forwarded to the PTO who give the job a tender number and put each tender form into an envelope for distribution to the printers. These forms are then either picked up by, or mailed to, the tenderers.

At 10:00 a.m. sharp on the closing date, the returned tenders are opened publicly and the names and bids are read out. The policy of the PTO is to supply photocopies of the completed spread sheet to those who are at the tender opening. This information is considered to be public information at the time of the opening. The tenders are then replaced in the tender envelope and returned to Print Procurement. The PTO retains only a copy of the front of the tender envelope with the names of the tenderers and the amounts each has tendered. This is filed according to tender number and can only be retrieved with difficulty without this number. The information is used for the Ministry of Government Services Annual Report which states the total amount of money tendered through the PTO according to the lowest bids, although the lowest bidder may not be the firm to get the job. The PTO have no record of who is ultimately awarded the job and will give only the lowest price tendered in response to any queries. Requests for further details are referred to Print Procurement.

Contracts are awarded on the basis of lowest bid and time constraints (geographical factors may become important here). It will not necessarily be the lowest bidder who gets the job, although usually it is. A purchase order is then issued. All material is filed in the tenders envelope by ministry and by purchase order number. This material is retained in-house by the Printing Services Branch for two years, then for five years in Records Storage. Access is allowed at the discretion of senior staff.

Purchase Order Form: This form is used to place orders and contains the name of the supplier, the client ministry, the person acting as liaison for the ministry, delivery date and job specifications (either on the form or attached to it). From the issuance of the Purchase Order to the delivery of the goods, liaison is between the client ministry and the supplier. Print Procurement will check the final product for quality. Public access to purchase orders is granted at the discretion of senior staff.

Form Letter to Losing Tenderers: This letter is sent to all losing bidders on a job, informing them that they did not get the job. It includes the name of the bidder who did get the job and the amount of the winning bid.

Forms Tenders List: This is a weekly list containing the names of all firms giving forms tenders, the winning bidders and the amounts of all bids. This information is open to those who participated in the bidding.

Invoice from Supplier: The invoice generally shows only the final amount being billed and should generally be the same as the amount tendered.

Any discrepancies have to be evaluated and approved by the client ministry in writing and appended to the invoice before it will be approved.

Print Suppliers Default List: There is a list kept of suppliers who, for one reason or another, do not meet government print standards. This information is available to the firms concerned. Print Procurement is currently in the process of generating a form letter to be sent to these people informing them of the problem. The "blacklisting" of a supplier is only temporary. After a few months they can be reinstated if they so request. If a reference request comes in to Print Procurement, the negative information will be given out. Also, MPPs can get information concerning printers in their own ridings.

Access: There is no formal access policy to Print Procurement documents. There is, however, an ad hoc system whereby a person can approach senior staff to get permission to view documentation. In general terms it would appear that access is relatively open in this area. The only set of data that will not be released is the equipment list for suppliers as mentioned above.

c) Contracting of Creative Consultants: Ministry of Energy

The Ministry of Energy makes use of consultants in many areas. The consultants are primarily technical consultants as defined in the Ontario Manual of Administration. The process for selecting and

contracting a particular consultant is set out in the Manual. There are no guidelines in the Manual describing what information is public or otherwise.

Preliminary Identification: When a need for a project/study is identified, the project group prepares a preliminary outline/recommendation for senior executive approval. This document explains the feasibility and rationale and the expertise required. This is set out in memo form, and sent to the Executive Coordinator or the Deputy Minister, depending on the level of approval required.

Tender Process: The tender process follows guidelines set out in the Manual of Administration. The first is a selective tender whereby a group of consultants (usually one-half dozen or so) who are known to possess the required expertise and facilities are invited by letter to (bid) submit a proposal for a particular project. These consultants come to the attention of the ministry from the personal knowledge of ministry personnel or have brought their capabilities to the ministry's attention, from technical journals or from a consultant contacting the ministry (or from the Management Board Suppliers List) directly and asking to be considered for future work.

If it is known that there is only one firm who is expert in a field, approval will be requested of the Deputy Minister to enter into an agreement with that firm.

The second process involves an invitation to qualify prior to a request to submit a proposal. An invitation is forwarded to a pre-established list of known, qualified consultants, published in trade journals or other papers inviting consultants to indicate their qualifications for undertaking a proposed project. These qualification letters include information on the background of the group and resumes of staff. A short list is developed from those qualified and these are requested to make a formal proposal based upon detailed terms of reference. A staff committee assesses the proposals in order to determine the consultants understanding and approach to the project based on the terms of reference. Liaison between the project group and the bidding consultants is generally verbal.

Evaluation of Proposals: When the proposals are received, they are assessed by the committee. This is a written evaluation and gives the reasons for choosing one proposal over another. This evaluation and recommendation for award is then sent to the Deputy Minister. Upon acceptance of the recommendation, all unsuccessful bidders are advised and their proposals remain the property of the ministry unless the consultant specifically asks that his proposal be returned.

Letter of Agreement: This is a standard form with certain variables reflecting the particular project/proposal requirements. The terms of reference and the proposal form part of the agreement. There are confidentiality requirements in the contract stating that the ministry

has the sole right to determine release of material. This is designed to protect the public since the results of the studies are paid for by tax money and should not be used for commercial purposes by the consultant. All materials become the sole property of the ministry.

Access: The policy of the ministry, as indicated in the Letter of Agreement, is that all documentation becomes the property of the ministry unless specified otherwise between the company and the ministry. Often, studies or results of studies are published (made available to the public) for the use of various audiences. Access to other documentation is available, based on the requester's need to know and for what use the information is being requested. It was considered important that this discretion remain with the ministry.

d) Contracting of Management Consultants:
Ministry of Culture and Recreation

The Ministry of Culture and Recreation uses management consultants for reviews of ministry policy, operational and organization studies. The contracting process is very straightforward. There is no access to any of this contract material unless authorized by the Deputy Minister, Minister or Cabinet.

When a need for a study has been identified by a program director, the systems coordinator is approached to aid in putting together the terms of reference and in carrying out the tender process. The process

itself is outlined in the Ontario Manual of Administration. The terms of reference give the background, a description of the assignments, the scope of the projects, the end product desired, reporting relationships, and the target date for completion of the study.

A list of consultants was originally compiled by Management Board. The ministry itself has been able to keep it updated by adding to the list whenever they hear of a consultant or are contacted directly by a consultant desiring government work. The list is broken down according to the capabilities and types of work done by the various consultants.

About a dozen consultants (if the project is over \$10,000) are chosen who are believed to meet the criteria required for the study, and are sent an invitational letter asking them to indicate their interest and demonstrate their qualifications. The terms of reference are supplied to them and the confidentiality of the subject matter is indicated.

The letters of qualification must indicate the people who will be assigned to do the work by the consultant and include the resumes of these people and estimated cost projections per person. For projects under \$10,000 full tendering is not required and three or four consultants will be contacted directly and asked to submit a proposal. Approval of the list of consultants being invited to quality must be obtained from the Deputy Minister before the invitational letters are sent out.

The letters of qualification are assessed and the list is narrowed down to three or four who are then asked to complete a full proposal based on the

terms of reference and an open briefing session. No minutes are kept at the briefing session as it is a question and answer session to make sure the consultants have all the information needed to prepare their proposals.

Once received, the proposals are analyzed, and one is chosen. An approval form is completed giving the background for the study and the procedure followed for tendering, the results of the analysis and a recommendation for the acceptance of the chosen proposal with the reasons for the recommendation. This form is signed by the requester, two recommenders and finally approved by the Deputy Minister. An agreement is then drawn up and signed by all parties (including the people being assigned by the consultant to work on the study). The agreement is extremely tight, specifying the exact people who are designated to work on a project, the confidential nature of the project, and the fact that the ministry owns all documentation collected in the course of the project and that this documentation must be turned over to the ministry in its entirety at the end of the project. The agreement also states that the consultant will be allowed access to any confidential material required to enable him to complete the study. In order to pass on any information to an outsider the permission of the Deputy Minister must be obtained. No changes or additions to the personnel involved in the study can be made unless the permission of the ministry has been obtained first and the contract is amended to include the new personnel. The proposal and staff resumes form a part of the agreement.

The Deputy Minister is specified in the legal agreements as being the source for permission to release documentation. It is the general policy that information is released only through the Minister or Deputy Minister.

5. Standards Setting

a) Production Standards for Mapping: Ministry of Natural Resources

Standards are set for each series of maps on the basis of aesthetics, traditional symbology, accuracy and uniformity. In the Ministry of Natural Resources, cartographers create and supply basemaps to geologists for them to record their field investigations and findings. They are subsequently returned to the cartographers to prepare the final printed maps. These are called "thematic" maps as they depict a theme in contrast to "topographic" ones illustrating only the topography. The information gathered for placing on maps is generally available to the public through other sources. Preparation of electoral maps defining new constituency boundaries are required to be kept confidential until the government itself releases the information. This is the only instance of confidentiality in this area.

A scale map standards manual is compiled by experienced cartographers within the ministry in order to maintain uniformity of mapping for each scale. The manual details the technical procedure to be followed in preparing a map of any series.

Mapping material is given a number for each job and is filed by number and according to geographic reference. This material is kept at the main office for a period of time and then forwarded to Cooksville for storage. Material can be recovered on demand. When the mapping job is

completed, the file is culled and only important material is kept for later reference. There is also a card index system involving two sets of cards, one filed according to job number, the other by geographic location. Each card lists all the material involved in the job and where it can be found. Any changes in the file material must be reflected in the card index system.

There is a considerable amount of discretion allowed to the cartographer in determining what places or other information are to be included on any particular map. Decisions are made on the basis of the scale involved and the amount of relevant material that is required to be placed on the maps.

Basically, the Cartography Section accepts as accurate material that is provided by outside sources. This information is reproduced on a map as accurately as the scale permits. There will be spot checks for accuracy of information, but generally a great deal of reliance is placed on the expertise of the cartographer leading the job. Each map is done to the completion of a plate positive, which is then sent to an outside printer for reproduction.

Access: The information collected in producing maps is not considered to be confidential except in unusual productions such as electoral maps. There is no specific policy for allowing public access. Routine production standards are not considered to be of particular interest except to cartographers. There are few people outside government involved in producing maps, and it is not likely that any requests will be made for

access to scale manuals and other map materials. Any other facets of information are readily available to the public from the same sources as used by the Cartography Section. It was thought that access could be allowed to the scale manuals and other materials, but that they would be unintelligible to anyone except a professional cartographer. The only issue raised was requests for the branch to supply their artwork to commercial enterprises wishing to reproduce the maps for profit. There is no policy covering this type of request and officials think it is important to set one soon.

b) Water and Air Quality Standards: Ministry of the Environment

Water Quality Standards: Water and air quality standards (objectives) are set through an elaborate committee process that consists primarily of dialogue among a group of technical experts who are expected to set quality levels by consensus. These objectives are flexible, according to practical ability to meet them and the prime use determined, such as recreational purposes, or effluent disposal. The final quality level will be oriented to the most important use. Objectives are set for two levels -- desirable quantities and rejection. The rejection level is determined through constant monitoring of scientific work published in various journals and other media. Desirable levels are based more on aesthetic values such as removal of odour, clear colour, no taste, and so on. Acceptable emission levels for both municipal and industrial sewage disposal are based on site-specific factors.

The ministry carries out studies of the current use and quality of waterways where an installation is proposed. This is done by taking a series of samples over an extended period of time. From these samples current problems with water quality, or the assimilation capability of the water body is determined. (The assimilation capability is the amount of effluent that can be dispersed with the least change in the desired character of the water body as determined by the prime use of the water body.) These studies are done either by outside consultants or by regional technical staff. Generally environmental assessments are done by outside consultants, while assimilation studies and water quality monitoring are done by the regional staff. This information is held by the regions in a technical form filed according to location. Reports are made of studies by the regions, primarily for the use of the Environmental Approvals Section. These reports are a statement of the current quality of the water body and levels of emission or changes in such water quality that the region considers acceptable. The determination of use is done through ongoing meetings with the municipalities. Reports are submitted to close scrutiny by the region and senior personnel from the ministry head office to keep the reports as objective as possible and to offset any strong biases.

Access: Once a final report is published it becomes available for general public consumption. The reports must be requested from the regional offices, however, and are not available through the Ontario Government Bookstore or from head office. Studies obtained from consultants are confidential until they are referenced in a ministry report, when they become public. This is because the studies are

generally only part of a larger study and could possibly be misused or misunderstood if taken out of context of the larger study.

In response to requests for information or advice during the progress of a study, the ministry will respond through a memo form report. Requests come from municipalities trying to solve problems or wanting to develop areas as well as from consultants who are involved in development planning. This is an effort on the part of the consultants to cooperate with the ministry at the design stage in order to save time and money -- an effort the ministry wishes to encourage. Currently there is no general public access to these reports, although officials see no reason why they could not be released.

Raw data are collected, sorted and analysed by the regional offices. Data necessary for monitoring are collected by network stations and filed by station numbers. There is a book published annually with the station locations and results of the monitoring process. Some of this material is computerized. Data for special studies are given a study number so that they are retrievable and are also cross-indexed by location. All data are public and readily accessible. Most requests for information necessitate averaging data over long periods of time. At present it takes approximately one half day per request to retrieve the raw data and combine them to get the required averages. It is not known when computerization, which will speed up the process, will be complete.

There are several publications put out by the ministry explaining water quality objectives and management in Ontario in detail. The titles are:

Guidelines and Criteria for Water Quality Management in Ontario;
Drinking Water Objectives; Objectives for the Control of Industrial
Wastes Discharge in Ontario; and Guidelines for Environmental Control.

The first two are booklets available through the ministry or the Ontario Government Bookstore. The last two are typewritten and photocopied sheets that are also available from the ministry on request, but are not available through the Bookstore.

Air Quality Standards: Air quality standards are determined by the Air Standards Study Committee consisting of an industrial specialist from the Pollution Control Branch, a minerologist, a phytotoxicologist, a biologist, two or three medical people from the Ministry of Labour, and a specialist in technological development from the Air Resources Section. Objectives are set according to practical application, and standards are negotiated with the industries. These standards are set according to levels of tolerance for any particular element or compound for human, animal and plant health as well as for property damage. Human health is the prime criterion after which levels are determined according to site use (e.g. animal health prime for cattle or dairy farms). These standards are not legally enforceable unless the amount of emission is detrimental to human health and material comfort. Industry cooperates in order to avoid stringent mandatory standards.

A fact sheet, which states the name, physical properties, use, state, etc. of the element or compound for which a standard has been requested, is prepared by the doctors and/or technologists on the committee. The fact sheet is circulated to all members of the committee who then meet

to discuss possible standards from the point of view of their individual and/or technical knowledge. A statement from each of the experts is made in writing before the first meeting as well as orally at committee meetings. There may be more than one meeting, and the statements will be revised according to any new considerations raised by other members of the committee.

Minutes of the committee meetings are very concise and generally only show the consensus viewpoint: they do not show the extent of disagreement between committee members, if any. These minutes are circulated to all committee members. When a final consensus of opinion has been reached, a detailed memorandum is prepared outlining the process of decision and the standard reached. This is sent to a Review Committee together with the revised statements of the individual committee members and all the background material that has been used. The Review Committee has never changed a standard reached by the Air Standard Study Committee, although they have asked just how good the method of measurement for any substance is and demanded an improvement in the method.

Access: There is currently no public access to the committee material. The data on the fact sheet could be gathered by anyone who had the ability and time to do the library research. As for the statements, officials interviewed think that they could be released -- all the statements are signed and it was suggested that the individuals involved should be able to stand behind these statements. Problems could arise, however, because there is always a certain amount of professional disagreement as to what constitutes a hazard. If the statements were

made public these experts might have to spend some time defending their statements to members of their own professions. The main difficulty, however, might come before the standard was reached if the process were slowed down through outside intervention.

Concern was expressed about the possible problems created by the use of standards material if taken out of context. The experience of officials with both media and uninformed or half-informed people has not been particularly good. At times standards have been demanded that are both unreasonable and unattainable.

A further concern relates to the collection of data from industries on a voluntary basis. There are already problems arising over data supplied to the International Joint Commission by the Ontario Government and then published by the IJC. Ontario collects the data on a confidential basis and the industries do not want to supply emission data if they are going to be given to the IJC.

The interviewees foresaw an increased demand for information in the event of a Freedom of Information Act. They indicated that a new filing system would have to be set up; new staff taken on with knowledge of all the various facets of Pollution Control Branch -- or a staff member for each section -- and a quick transfer from hard copy storage of technical data to computers.

c) Occupational and Industrial Health and Safety Standards:
Ministry of Labour

The Standards and Programs Branch was established as a staff unit in the Ministry of Labour in 1977, and formed from two safety sections originally in the Ministry of Health. They are responsible, among other things, for helping devise standards under The Industrial Safety Act, The Construction Safety Act, and Part 9 of The Mining Act. The Regulations under these Acts deal solely with safety hazards. At present, the branch is involved in developing an Act with standards and Regulations to enforce health standards as well as safety standards. They are also developing a process for the setting of standards that will allow maximum consultation with industry, labour and the public in the shortest possible period of time.

Draft standards are devised by the branch in consultation with outside experts and other ministry officials. Briefs are requested to be submitted sixty days after publication of a draft standard in the Ontario Gazette. When the briefs are received, they are analyzed and discussed both within the ministry and with outside experts. From this analysis a revised set of standards is developed.

When the revised standard has been completed it is again published in the Ontario Gazette for comment. After a further sixty-day period, any further briefs are analyzed and discussed. If necessary, the standard will be revised again.

The final stage for standards that are to be included in the Regulations is to send the complete package of documentation to the Minister and Cabinet, where the final decision is made and the Regulations passed by Order-in-Council. Once the Order-in-Council is passed, the complete package of material, including the standard, briefs, correspondence and analysis, is to be lodged with the Legislative Library for public access.

Guidelines, which are not legally binding but enforced through persuasion, follow the same process but do not go through the final approval and implementation stage. This material will also be made available through the Legislative Library.

In summary, all aspects of health and safety standard setting is completely available to the public.

d) Standards for Elevating Devices:
Ministry of Consumer and Commercial Relations

Standards for elevating devices are developed through tripartite dialogues between government, industry and users. The process usually starts informally with the branch identifying what area needs a standard and then contacting and trying to involve those who should be interested in the discussions.

A group of people are called in to form a committee for the purpose of putting together an official government standard. These committees are

made up of representatives from other parts of government, from the Elevating Devices Branch, and from organizations and people directly involved with the use of the particular type of lift equipment concerned. These people meet and discuss what is considered to be important to the safety of such devices and the technology available to meet these needs. In addition, information is sought from other jurisdictions who already have standards for the particular type of device in question, and this is presented to the committee for discussion. In some instances, it is decided not to accept outside technology and the development of a prototype device may be authorized in order to test out the various requirements. Once a standard is determined, it is put before a Cabinet Committee who recommend its inclusion in the Regulations of the Act.

If a manufacturer wants to deviate from a regulated standard he has to apply to the branch for approval of the deviation. In short, standards remain flexible; deviations will be allowed as long as they do not constitute a safety hazard. It is the branch's policy to determine these matters on an individual basis.

In many cases, the Canadian Standards Association will already have a standard developed and this standard will be adopted by the government. The Elevating Devices Branch are represented in the CSA standard-setting process and thus are always up-to-date on developments there as well as having a great deal of input to CSA standards.

The files kept for standards are organized by the name of the type of

standard being developed. They consist primarily of correspondence from committee members, minutes of committee meetings, internal and interministry memoranda and correspondence, published technical material where available, standards and other correspondence received from other jurisdictions approached in the search for an appropriate set of standards.

Access: Access in this area is totally open. In fact, the branch would appreciate more people wanting access to the process and would willingly give out all the information they have. They would also like more people to get involved with input to the committee (guests are invited to attend their meetings and to give their opinions). Technical opinions of staff members are open to the public.

6. Research

a) Testing of Highway Paints: Ministry of Transportation and Communications

The Ministry of Transportation and Communications undertakes traffic paint testing to ensure that the paint they use meets minimum government performance standards, and to ensure quality control of paint actually delivered once it has been approved for purchase.

Form 1710 is a booklet produced by the ministry to tell prospective suppliers about the paint testing process, and to outline minimum

performance specifications.

Access: All prospective suppliers are given this booklet on request.

Form 1710-9 contains paint formula and other information submitted by a supplier when paint samples are sent to the government's laboratory for testing.

Access: Only ministry personnel and the submitting supplier see this form. The form is considered confidential because it contains a paint formula, which is viewed as competitively valuable business information.

Form OB-MT-247 5-75 contains raw test data of the results of tests on all paint samples submitted for approval.

Access: Ministry personnel only. A supplier will be given his results orally, but is not allowed access because the form contains information about the paints of his competitors.

Internal Report: After field-testing, the raw test data and field results are evaluated and a decision is taken about which paints are approved for use. A report is sent to the ministry's Purchasing and Supply Office.

Access: Because it contains commercially valuable information, only ministry personnel are allowed to see this report.

Approved List: Paints that meet government standards are placed on the

approved list, which is maintained by the Purchasing and Supply Office.

Access: On request, any inquirer may be given this list.

b) Water Quality Improvement Research: Ministry of the Environment

The Water Technology Section is involved in two types of work -- research projects and field services for regions and municipalities. Research is done by the section in order to check and/or develop new and cheaper methods of removing such unwanted qualities as bacteria, colour and odour from drinking water. They are not involved in research of a medical nature, although they do keep up to date with medical findings that affect their work. As well as checking out new methodology they must determine what the economic cost of each new method will be. Research projects are undertaken when a municipality has a problem to be solved, in order to keep up with scientific and technical developments, or for political reasons.

The documentation collected and filed by the section is hard data in one form or another. For each research project a notebook is kept in which is recorded the results of all analyses and other findings. The analysis forms are preprinted and the rest is handwritten. All findings generated by research projects are published and circulated to all regional, municipal and other interested water technology personnel. The reports go through an approval process with various directors and senior executives of the ministry where the results are justified and defended. After

approval, the report is available to anyone who wants it, although they are highly technical and would be of limited use to the public. The reports are given titles and numbers, listed in a catalogue, and stored at the Water Technology Section offices. Reports may also be reproduced in technical and scientific journals and/or presented at technical conferences and meetings.

Technical notes and bulletins are sent out as guidelines for various aspects of water treatment and management. These are assigned numbers and circulated to the regions and municipalities as well as being available to the public on request.

Access: There is complete public access to the material collected by this section. It is expected that the system they already have in place would be able to handle any increased demand arising out of a Freedom of Information Act. There are, however, three possible areas of concern with release of information before completion of a project:

- . the data may be used out of context or misinterpreted;
- . the final results may differ from interim findings; and
- . the professional belief that scientists should have the right to be first to publish their findings.

To date, however, these concerns have not led to restrictive measures as far as access is concerned.

7. Financial Administration

- a) Financial Management of the Nursing Home Inspection Service:
Ministry of Health, Ministry of Government Services, Management
Board, TEIGA, Provincial Auditor

One of the key problems faced by government is the management of cash resources and requirements. Since there are often large amounts of money that need to be raised (or loaned out for interest for short periods of time), it is to the government's advantage to have effective tools for financial management. The process of financial management and accounting, of course, involves such central agencies as TEIGA, Management Board, and the Provincial Auditor. All parts of government, however, are involved in the process. For those parts of the process that are carried on in the operating branches, we examined the way they are handled in the Nursing Home Inspection Service of the Ministry of Health.

The key tools for this job in the Ontario Government are the Calendarization document, the Accumulative Cash Flow Report, and the Expenditure Variance Report.

Calendarization: This odd collection of letters has been elevated to the status of a word by government officials and refers to a projected cash flow statement for the coming year. The document is produced for each service within the branch, and for branch administration, and reflects workload factors, salary increases, and so on. The service documents are amalgamated at the branch level, further consolidated by the Fiscal

Resources Branch to follow the format of the printed estimates, and then sent to TEIGA and the Management Board Secretariat.

Access: The individual calendarizations are viewed as accounting documents and are therefore not likely to be confidential. However, access policy in this area has not been tested. Each quarter, the Treasurer publishes a document called Ontario Finances, which publicly discloses in-year overall budget performance. Also, calendarization of spending appears in the Audit Report.

Accumulative Cash Flow Report: Every month, a compilation of the amounts spent and the percentage of budget allocated to a particular expenditure is prepared. This report shows the approved budget, the amount spent and committed to date, the balance remaining, the percentage of budget spent, the calendarization figure, the actual dollar figure spent and the percentage of the year's budget spent.

Expenditure Variance Report: Variations from projected budget to actual dollars spent are also compiled every month by the branch. From the data in this report, a memorandum is prepared and sent to Institutional Health Services, TEIGA and to the Management Board Secretariat to account for any variation that represents \$100,000 or 3% of budget, whichever is smaller.

Access: These documents are viewed as accounting documents, and are probably not confidential. Probably because the Treasurer explains significant variations when the quarterly report is made public, the question of access to individual reports has not been tested.

Accounting: When a payment is to be made, the expenditure is coded according to a government-wide classification system, and according to a ministry system compatible with the global system. The government accounts are the responsibility of TEIGA, although the actual payment is made by the Ministry of Government Services. The accounting system is based on the estimates, which are given a coded number and expenditures are posted to the budget expenditure line. For example, \$2,997,200 was budgeted for salaries and wages for Institutional Care Services (the division that the Inspection Branch falls under). When money is spent on a nursing inspector's regular salary (i.e. not overtime), then it is given a code 1110 (known as a Common Object Code), a requisition for the money is drawn up, and a cheque is issued to the inspector. The expenditure is then shown in TEIGA's records. Theoretically, at the end of the year when all salaries have been paid, the budgeted figure that appears in the estimates, and all the expenditures coded 1110, plus the other types of salary coded LXXX, will be exactly equal.

The ministry also gives an internal code to such a transaction, which is known as a Cost Centre Code. In this case, since it is a nursing home inspector, it will be coded 5140 for the ministry's computer. This enables the ministry to show that a salary within the Nursing Home Inspection Service has been paid. The ministry wants much more detail regarding expenditures than TEIGA requires, and since TEIGA's records would only show that a salary had been paid within the Institutional Services Division, the ministry has set up this system to provide the detail it needs.

Access: The Common Object and Cost Centre Codes are not confidential. The ministry has often been asked for the code sheets by people doing studies (particularly economic studies), and TEIGA often gets requests from other jurisdictions for the code sheets so that they can make comparisons between their system and Ontario's in their search for improvements.

In order to standardize the accounting system throughout government, TEIGA not only developed these Common Object Codes, but also developed a systematic accounting policy statement so that, for example, the posting of an expenditure under the heading Mailing (Code 3200), which is a sub-group of a transportation and communication cost centre found on the estimates pages, would always occur if the expenditure involved buying stamps. These accounting policies are found in the Accounting Policy Statements and Instructions. In addition to this manual, the Fiscal Resources Branch of the Ministry of Health uses the Ontario Manual of Administration (2 volumes), which details general policies, personnel and employee benefits treatments.

Other manuals used are: Manual of Corporate Policy and Procedure (Ministry of Health); Manual of Supply, which describes purchasing practices for the government; Visual Identity Manual, which describes government logos, letterhead style, etc.; Records Management; Forms Management; Integrated Payroll, Personnel, Employee Benefits System Manual; Broad Banding Manual, which describes jobs, etc.; and so on.

Access: Manuals are considered open to any ministry staff person. Since

any one particular ministry may use several different manuals, this effectively renders manuals public documents. There is, however, an absence of a generally understood policy regarding access by members of the public.

Travel Claims Forms, Requisitions, etc.: These documents are viewed as accounting documents and are therefore probably not confidential. For example, each individual's total travel expenditures for the year are published in the Public Accounts if they total more than \$2,500.

One exception to this general policy is an individual's present salary. This is viewed as confidential, since disclosure would violate an individual's privacy. All a member of the public may find out is the salary range for a particular employment classification, and confirmation that a particular individual is employed in government in a certain classification. Civil servants earning over \$25,000 per annum, however, find their previous year's salary published in the Public Accounts.

The Public Accounts to Ontario are published each fiscal year in a multi-volume tome. They are essentially the financial statements, with full disclosure notes, for the province.

8. Program Delivery

a) Capital Grants Program for Ontario Farmers:
Ministry of Agriculture and Food

The Capital Grants Program for Ontario Farmers is administered by the Extension Branch of the Ministry of Agriculture and Food, with the main paperwork done and filed by the Accounts Branch. The Extension Branch becomes actively involved with individual applications only when a problem arises.

Applications for grants are distributed to the farmers by local Agriculture and Food District Offices. After a project has been completed, the farmer fills in an application form, has an inspector from the regional office inspect the work, and sends two copies of the application to the Accounts Branch for processing. A third copy of the form is kept by the farmer and another by the regional office. Inspection reports are written directly on the application form. The application form contains the name and address of the farmer, the size of his farm, his gross annual income from the farm payments (this may be only an approximation or a statement that the income is over the \$3,000 minimum to qualify for a grant), and the dates work was begun and completed. The ministry may request that a copy of the farmer's income tax return be attached to the application as proof of his income from farming. All invoices for the work done must be attached to the application. Original invoices received by the Accounts Branch are never

returned. They will be shown to the federal income tax people if permission is granted by the farmer, but only in the Accounts Branch offices.

A record card file is kept to record the amount of grant each farmer has received as a quick reference for the branch. When an application is recieved they check the cards on file, as well as the old applications, which are filed according to the farmer's name. If there is no card a new one will be made up. When the grant is determined, this amount will be filled in on the card. Each time a farmer makes a new application, the amount of the grant will be added to this card. When he reaches the maximum allowable total under the program, the card is filed in a separate drawer for such records. A similar file may be kept by the regional office, but this is not mandatory and not always done.

There are two form letters used. One is used to return copies of invoices that are not needed to qualify for a grant (originals are not returned). The second advises the applicant that his application has been received, that it is being processed, that an amendment has been made to the application if applicable, and the total grant he will receive. Copies of this form letter are kept by the Accounts Branch and filed according to county.

A vendor reference file input form and a coding input form are now going to replace the individual cheque requisition forms that have to be completed and sent to Accounts Payable with one copy of the application in order to have the cheques made out and sent to the farmer.

General correspondence files are maintained by both the Extension Branch and the Accounts Branch. These contain correspondence regarding applications that present problems. They are filed according to county and are not particularly extensive. At the present time the Extension Branch is holding all correspondence from the beginning of the grant program (approximately 10 years) in two file drawers.

Access: There is no ministry policy for access to this material. It is considered to be confidential by those who handle the material. The opinion was expressed that if access were granted generally, it could lead to involvement of the ministry in legal disputes between creditors and debtors.

b) Administration of Grants Program to the Arts: Ontario Arts Council

The Ontario Arts Council administers grants programs for Ontario artists and arts organizations and is involved consultatively in Wintario granting. During the course of a year they give out about 3,000 grants. Roughly half the grants go to arts organization such as theatre and music groups, and half to individual artists. Among their grant programs is one that funds creative artists wishing to carry out projects with children in schools.

Grants to Organizations

General Application Form: Any organization such as a theatre group that

wishes financial help fills out a general application form and submits it six weeks prior to one of the quarterly Council meetings at which grants are awarded. On this form the group is asked to identify itself and its officers and directors. It must give a statement of what artistic work it has done in the last year as well as a proposal for the coming year. The proposal must include all details of projected performances, such as, in the case of a theatre group, the names of the plays it will do, the directors to be used, actors that will appear, and the proposed budget. This is to give an indication of the artistic intentions of the group. The organization is not held to doing the exact program given in the proposal, as circumstances may intervene to prevent the use of a particular play or artist. It is, however, expected to maintain the same level of artistic quality if it wants to get further grants.

The organization must also include a financial statement. In the case of groups who get annual operating grants, the financial statement shows how the previous year's funds were allocated. For all groups, the statement must include information as to their current financial status, and the use to which the requested grant funds will be put.

Access: Each application is considered confidential unless the organization wishes to release it. Occasional requests are received from art students for information on client groups in Council files regarding operating budgets, principal dancers, etc. The Council takes the position that any information supplied to them is confidential and that they need permission from the group or individual to release it.

The major issue is the confidentiality of current files, which contain such information of a competitive nature as the names of actors to be approached and amounts to be offered for their services. The application may cover plans over a period of up to three years. Public access to this material could be damaging to negotiations that are going on.

Consultation Reports: These are evaluations on each application done by experts from the artistic field involved. When an application is received, several people actively involved in the arts and who are aware of the group and its abilities are consulted for evaluations. The evaluations are done on a volunteer basis by the experts, and it is largely on the basis of these opinions that the Council makes its decision to award a grant or not.

Current access policy is not to make the written evaluation reports available to anybody, including the artist or group. Officials will give an oral report in a tactful way, but do not want to be put in the position of telling anyone they are not considered talented -- primarily because of psychological impact such a comment might have.

Officials are also concerned about identifying the evaluators with particular evaluations. The current practice is to publish a list of evaluators used but in such a way that an artist or group could not identify who did any specific evaluation. It is thought that with a change in the policy, the evaluators might be subject to harassment by the artists and it would be difficult for the Council to obtain good evaluations for its use. The Canada Council is currently reported to be

having this problem as a result of publishing evaluations received by it. The opinions are rumoured to be so watered down as to be virtually useless in assessing the ability or need of groups and artists.

Confidential Memorandum: The Council officer responsible for each discipline receives the evaluations and uses them to prepare a confidential memorandum for the Council covering the background of the group, an analysis of its financial position and prospects and a summary of the evaluators' comments. By request of the Council, the memorandum does not identify the evaluators with their opinions. The officer also makes a recommendation as to whether a grant should be awarded and the amount.

Council Minutes: Each application is debated in Council and a minute appears for each with the decision reached by Council. To date Council minutes have been considered confidential.

Appeals: This is an informal system. Each applicant who is refused or given a lower grant than requested is given the reasons for being declined or having the grant reduced (e.g. Arts Council supports "professional" groups and the group is not professional yet). The applicant may then supply additional information and request another hearing. Seldom do applicants appeal the Council's decision, however. Appeals that occur more frequently concern reduced grants or conditional grants than outright rejections.

Types of Grants: All Council grants to organizations are based on

estimated merit and financial need. The grants are basically of two types: annual operating grants to assist with a full-year's activity; and project grants to assist with specific, limited activities. New groups, whose abilities may not yet have been tested or proved, are often awarded project grants. The outcome of the project assisted will usually determine whether the group will qualify for further grants.

Grants for Literary Arts

Grants to Book Publishers for Canadian Books: These grants are in response to a Royal Commission report that the Canadian publishing industry was in trouble. To obtain a grant a publisher sends in an application containing a statement of ownership (Canadian), and a list of books by Canadian authors published in the last year. The Council does not ask for financial statements from publishers. The Council applies a formula whereby grants are determined by the number of Canadian books published. Currently the Council divides \$400,000 proportionally among fifty publishers who apply for grant funding.

There is nothing confidential about the material collected for these grants. The material would also probably be willingly supplied to the public by the publisher himself.

Grants to Magazines: These grants apply to magazines dealing with the arts. The publisher submits an application form that contains a financial statement for the past year as well as the coming year. Copies of several issues of the magazine must accompany each application form.

The application and sample issues are then sent to an independent jury from the field who give assessments of the magazine and make recommendations to the Council.

This material is confidential for the same reasons given earlier in connection with financial statements and evaluations.

Grants to Individuals

There are two systems for awarding grants to individuals.

Traditional (Competition): In this case an independent artist applies in a grant competition (e.g. short films) on a twice-yearly basis. Both experienced and emerging filmmakers may apply for a grant in separate categories. The artist makes a proposal and includes a sample of his/her film work. A jury of five experts looks at all sample films and application proposals and gives its recommendations. The areas covered in this type of competition are: film, photography, video, choreography, and creative artists in schools.

The material is considered confidential for the same reasons as above.

Third Party Recommendation: This system started in the literary office of the Ontario Arts Council and evolved out of the problem of evaluating individual writers. It was thought that the publishers already know who are the promising authors and the Council decided to use that knowledge to decide grants. Each of the publishers has a certain amount of money

held in his name in Council accounts each year. When the publisher recommends a Canadian writer to the OAC, the grant they recommended (up to an annual maximum of \$4,000 per author), is sent to the author. The publisher may continue making recommendations until the allocation is gone.

A similar system is used for other types of artists. Theatres are designated to recommend playwrights; art dealers and galleries to recommend painters and sculptors. There is a combination of the two systems for composers.

The system is very fast as it cuts down bureaucratic assessments. The system is publicly known and an author or similar artist enquiring about a grant will be supplied with literature explaining the system and a list of publishers, etc., designated as recommendors. The artist then approaches one of the recommendors. If the artist receives a grant through a recommendation he is under no legal obligation to the recommendor. In this way the Council does not have to have literary and other experts on staff to handle these applications, nor do they have to make value judgments on an individual's talent.

General Access Policy: The Ontario Arts Council believes that it has an obligation to inform the public of who is getting grants and the amounts. This is done through press releases when grants are awarded, as well as in the Annual Report. Information on those who are refused is not released, in order to protect artistic reputations. The applicant may make the information public but the Council will not.

Some reasons for confidentiality of evaluations and applications are discussed above. There is another central concern of the Council, however, relating to its position as an "arm's length" agency of government. Through its practice of using expert, independent evaluations drawn from the arts community itself, the Council is demonstrably able to exercise its mandate free of possible political pressure or individual preference. Were the supply of independent evaluations to "dry up" under threat of loss of anonymity, Council's vital links into the arts community, and the attendant credibility within that community enjoyed by Council would be severely curtailed. In addition, Council would be forced to rely exclusively on staff expertise, which would result in both increased administrative costs and a more bureaucratic decision-making process.

There is little pressure for information from the public at present. There is more pressure from the legislature, but this can be met without violating confidentiality.

9. Intergovernmental Relations

- a) Cooperative Programs for Development of Bilingualism in Education (Colloquially Called the Minority/Second Language Program):
Ministry of Education

This program began in 1970 and is a formula payment arrangement between the provinces and the federal government whereby the federal government

will pay certain percentages of the education costs of bilingual programs in schools and of minority language programs.

Working Papers: Prior to the beginning of each fiscal year, Ontario provides the federal government with a forecast of the claim amount for that year, and the federal government makes quarterly advance payments on that basis. This forecast is further refined later in the year. About nine or ten months after the year's end, the final transfer payment is determined on the basis of published financial information contained in the financial statements of school boards and the Public Accounts of Ontario.

Access: Access is allowed on request to any inquirer. Access on a regular basis is enjoyed by ministry personnel, federal, provincial and the ministry's internal auditors, Statistics Canada officials, the operational review branch of Management Board Secretariat, and federal Secretary of State personnel. Very little interest has been expressed in this information by members of the public.

Special Projects: Invoices: The ministry also makes claims for special projects that are the subject of a cost-sharing agreement with the federal government, whether they are undertaken by itself or by other ministries. The appropriate data are obtained, a Secretary of State claim form is filled in, an invoice is generated and sent to Ottawa, and payment is made, received and accounted for.

Access: Aggregate data is published in the Public Accounts of Ontario.

Access to raw data is allowed to any inquirer on request, except where such access would violate the privacy of an individual. For example, a salary paid to a particular teacher under the Citizenship and Language Agreement would not be disclosed.

b) Certification of Teachers from Other Provinces:
Ministry of Education

A teacher from outside Ontario wishing to teach in our schools must have academic and professional education equivalent to those of Ontario teachers. If the applicant has the appropriate qualifications, the ministry will award a Letter of Standing.

Application for a Letter of Standing: This form is submitted by the applicant, and contains information on the teacher's name, address, telephone number, social insurance number, country of citizenship, academic standing, and teacher training. In addition, the teacher is required to send in a photocopy of his present Teacher's Certificate, and official transcripts from his university (or secondary school, if he has no degree), and Teachers' College. The applicant may also be required to send in a photocopy of his birth certificate, official evidence of name change, a statement from the issuing authority for the teacher's current certificate that such certificate has not been suspended or cancelled, proof of landed immigrant status or Canadian citizenship, and recent proof of freedom from active tuberculosis. If the ministry considers the teacher's qualifications equivalent to those of an Ontario teacher, a Letter of Standing is issued.

Access: As a teacher makes an application, a manual file is opened, to which access is restricted to ministry personnel and the applicant or a person having the applicant's written permission.

Status File: Once a letter of Standing has been issued, the ministry opens a computerized status file. This file contains the teacher's name, S.I.N. number, birth date, sex, citizenship, certification and type of certification, academic and professional training, and indicates if the certificate is in good standing, suspended, or cancelled.

Access: Access is restricted to ministry personnel and the applicant or a person having the applicant's written permission. The public are entitled to know only that a particular teacher is certified, and what type of certification is held.

c) Provincial Municipal Water and Sewage Programs:
Ministry of the Environment

The Ministry of the Environment must approve all municipal works of construction and development. They are involved in subdivision approvals (with Housing), individual lot severances, land fill, public water supply and official plans. They work closely with local Boards of Health and Municipal Councils.

There are formal, standing, provincial/municipal liaison committees made up of ministry representatives, the regional chairman, mayors and reeves. Most decisions regarding municipal development are made at

these meetings. The minutes of these meetings are circulated to all attendees and read into the minutes of local councils. These are therefore public documents. Some things discussed at the meetings will be omitted, however, because their release may be premature. Non-official correspondence is treated as confidential and the municipalities' permission would be sought before release. All official documentation is public and therefore there is access to all approvals and planning documentation.

Laboratory analyses of municipal waterworks, land fill, sewage, etc., are all public documents and will be released upon request. The same documentation on private property, however, is confidential. The ministry will release all files upon receipt of a letter or telephone call from the property owner authorizing their release. A departmental legal opinion was obtained that indicated that all such documentation collected or received about private property falls within the realm of confidential information and cannot, therefore, be released without the permission of the owner of the property.

The ministry finds that complaints by individual citizens, such as neighbours, are valuable sources of information about unsatisfactory conditions. In order to ensure that embarrassment or intimidation will not result from lodging a complaint, the ministry will not divulge the source of any complaint. It is thought that to do otherwise would jeopardize this source of information. Orders to comply with repairs, etc., however, are completely and specifically public.

Municipal expansion or building of new treatment plants or other projects

must be preceded by a process of public hearings, so all documents are public as a matter of course.

There are monthly reports on sewage facilities compiled by a sampling and analysis process. Samples are either sent in by the municipality or collected by ministry inspectors. These monthly reports are generally sent to the Clerk of the Municipality who reads it into the Council record as public information. Seriously bad reports, however, will be held as confidential in order to allow correction of the condition without embarrassing the local officials. It is thought that this policy helps maintain good relations with municipalities and improves the probability of fast compliance with orders. These reports are also used as the basis for prosecutions, and where this is a possibility release is withheld until the decision to prosecute or not has been made.

Municipalities can obtain funding for expansion or building of new sewage facilities of up to 75% of the cost, based on financial need. Administration of this program is a ministry head office function and a municipality requesting a grant will write directly to the head office. A questionnaire is sent to the regional office who fill it in, indicating the urgency of the project and the financial need of the municipality. The application and the questionnaire are then assessed by a committee who decide on the allocation of the funds available for such works. Their decision is based on specific criteria with health factors ranking highest and growth lowest. These criteria are given numerical values and the applications receiving the highest numerical grade receive funding

first, and so on down until the funds run out. The municipalities are aware of this system of allocation. However, failure to obtain any provincial funding does not mean that the facility does not have to be built or improved. Even where subsidy is not forthcoming a municipality must still comply with the ministry orders for certain standards for the area.

Access: Access is allowed on request for specific information, although complete files are not released without approval from senior ministry officials. Whenever release is approved, internal memoranda are considered privileged and deleted from the files. The main problem is that the ministry policy on such release is fuzzy and staff really are unclear about what should be released and what should not. When access is granted to relatively complete files, all incoming and outgoing correspondence is left in. The main sources of requests for these files are lawyers, groups and individuals who are preparing court cases or briefs for public hearings. Confidential material is generally filed separately from the main files, but under the same heading. Impact studies are considered to be public information and would be released on request, whether they are published or not.

10. Summary of Findings

1) There is no coherent, consistent policy regarding the release of material and information obtained and used in the process of day-to-day administration of government programs. For many documents no policy

exists at all, and requests for them or for the information they contain inspire what must be ad hoc responses by civil servants.

- 2) Material that is thought to contain what would be perceived by business as commercially confidential information is not released to the public in the normal circumstances (except as noted in (4) below).
- 3) The release of some of the commercially confidential material would, in some circumstances, have a detrimental effect on the efficiency of administration of government programs.
- 4) Reports of government inspections under some statutes are released publicly -- others are not.
- 5) Some personal information about private citizens is released.
- 6) A wide divergence of practice characterizes the treatment of information about the actual administration of programs, even where the processes are generally similar (e.g. standards setting).
- 7) The number of requests from the public for information that is considered confidential is small.
- 8) For most programs the number of requests for non-confidential information is small (the major exception studied by us being the program of driver licensing and control).

9) The amount of administrative inconvenience that would be created by allowing access to currently confidential information varies considerably. Separating confidential from non-confidential material in existing files and documents will be difficult and time-consuming in many instances. This difficulty could be overcome in the future if the material were designed with the possibility of release in mind.

CHAPTER III

ANALYSIS

Although not all the documents and information collected and used by government can be easily classified, much of it can be grouped into broad categories that are useful from the point of view of the Commission's interest. In this section we examine the material we have studied under several broad headings.

1. Information About Businesses Supplied by Them

Many of the programs we examined involve the collection of information from people outside the government that does or could have implications for the commercial competitive position of the business or person supplying that information. The examples we found are:

- . design of proposed elevating devices;
- . nursing home design, operating and financial information;
- . capacity and sales of printing plants;
- . chemical composition of road paints;
- . succession duty information re assets, debts and closely held companies;
- . production information from plants whose effluent levels are monitored;

- . architectural drawings for proposed buildings;
- . cost information in construction tenders;
- . future plans for production and casting by arts organizations.

In all cases but one -- production information from plants whose effluent levels are monitored -- the information is supplied as a matter of requirement by law, or in order to derive some benefit in the form of a contract or grant from the government. In every instance but one we examined, the government keeps this information confidential and does not allow access to it by the public or by competitors. This treatment is called for by law in the case of succession duty information. In the other instances, the practice is adopted as a matter of policy, sometimes as a way of ensuring that information that is useful in program administration will continue to be supplied -- as with printing plant data, and production information from plants whose effluent is monitored.

The exception to the maintenance of confidentiality of this type of information is the architects' plans gathered by the Ministry of Government Services in the process of administering construction contracts. These documents may be read, though not duplicated or taken away.

A constraining implication of the release of information not cited by officials interviewed is the matter of breach of confidence. The force of this constraint is unmeasurable, since there are no reported cases of actions against the government on these grounds, and public interest served in breach has successfully been used as a defence in cases elsewhere.

One issue raised by all the types of information examined is whether or not members of the public -- including possible commercial competitors -- should be able to learn things from the government about individual businesses that they could not find out elsewhere. It is unlikely, for example, that a nursing home would willingly divulge information about its own violations of The Nursing Home Act, although it might be tempted to do so if it could show a relatively full compliance compared to a competitor. Similarly, is it fair that a consultant's imaginative proposal for the conduct of a study or design of a public relations approach should be publicly available for exploitation by anyone, especially where the proposal is not accepted by the ministry to which it was submitted? Just because a company wants to qualify for tendering on supplies of paint for highways, should the chemical composition of its products be made available to anyone? The effect could be to make a gift of the company's research and development expenditures to all competitors.

The treatment of this type of information will depend in large part on the basic philosophic approach the Commission takes. If it is the Commission's predisposition that all information collected by the government should be made public if at all possible, then access should be recommended except where the government would be put in a position of either violating statutory provisions (which could be recommended to be changed) or breaching a confidence (which could be overcome in the future by a specific declaration that the material will be made public). There are several implications of such an approach that would follow.

First, where the information is supplied voluntarily, there will be a certain amount of drying up of that information. It is clear, for example, that companies divulging production schedules for the convenience of the Ministry of the Environment in its monitoring of effluent flows would stop supplying that information if it were to be made public. So sure is the ministry of this that they are currently considering refusing to provide the information to the International Joint Commission because of that body's policy of giving public access to its records. Lack of this kind of information would severely handicap the ministry in its work. A decision to overcome the difficulty by legislating a requirement to provide the information needed is one that we think would be of dubious political sagacity.

That printers would stop supplying information about their sales and plant capacities is not quite so clear. One printer interviewed said he would definitely continue to do so, though he questioned why annual sales figures are needed. Another thought the information is publicly available elsewhere (he is wrong) and somewhat reluctantly said that therefore it does not matter. Since the information is supplied in order to qualify for tendering on government contracts, it seems likely that many printers would continue to supply the requested information even if it were made public. In this connection it is wise to consider the attitude of the ministry officials, who feel strongly that it is improper for government to disclose this kind of currently confidential commercial information. It is quite possible that the manner in which the information is collected could be changed to avoid specific details being kept on record. The ministry itself groups printing plants into categories by

capacity on the basis of information about equipment that it receives. A change could be made to have the printers classify themselves according to the categories already used. Such compromise would not, however, give the ministry the detailed information it now often uses for inviting tenders for specific jobs. Information about annual sales volume, together with other data, permits the ministry to assess the efficiency of a plant, and is described as "useful, but not crucial". Since many printing plants are privately owned, it may be expected that there will be resistance to providing sales volume figures if they are to be made public. The loss of this information will not severely handicap the ministry in its work, but will probably marginally decrease its efficiency, with some resulting cost to the public purse. It is our conclusion, therefore, that providing public access to this type of information would be detrimental to the administration of public affairs.

The same considerations and conclusions apply to the supplying of information about the chemical formulae of paints. The companies are under no obligation to supply this information, and would be understandably reluctant to do so if the formulae were to be made available to competitors. The lack of this information would be certain to make the ministry's job of testing more difficult and slower, and probably raise costs.

All the other information we examined that fall under this general heading would have to continue to be supplied since it is either required by statute or regulation (nursing homes and succession duties) or is essential for obtaining a government contract or licence

(construction and consulting contracts, and approval of elevator designs). Where disclosure is not required by law, the advantage of a government benefit will almost certainly outweigh the possible commercial disadvantages of having the information made public.

To the extent that the Commission is concerned to safeguard the confidentiality of commercially useful information (as is done in the legislation on freedom of information elsewhere), it will want to modify the general rule of public access. Apart from the effect on the effectiveness and efficiency of government administration, there are two factors that should be considered. One is the degree of public interest that is served by making access available. The other is the degree of competitive disadvantage that is likely to occur.

a) Public Interest Considerations

The general public interest argument is that the government's business is the public's business and that only if all government files are freely available can the public ensure that administration is effective, efficient and honest. The same information on which government makes decisions should be available publicly so that the propriety and wisdom of these decisions can be judged. Proponents of this argument usually hold that not enough is known about corporations and their commercial affairs and that if information about them is already in government files, collected and kept at public expense, it should be made public. Less zealous adherents of this point of view would balance the degree of

competitive disadvantage entailed in disclosure with the resulting benefits to the public.

The degree of advantage to the public that would result from disclosing the information we have examined varies considerably. For example, it is conceivable, but only just, that some mechanical engineers might identify and successfully demonstrate that the design of an elevating device approved by the ministry is in fact in violation of ministry standards. If this happened at all, it would probably be the byproduct of some industrial espionage made possible by access to government files.

It is hard to visualize the public interest served by the release of proposed physical and operating plans for nursing homes -- the only possible, but improbable, instances being where proposals run counter to building codes and the like and are discovered to be in violation by outsiders rather than officials. The financial operating reports of the homes could conceivably be of interest to patients or their families, and possibly influence decisions to continue or discontinue patronage. Since the information contained in these reports is strictly financial, however, it is unlikely that this would occur. Reports of substantial profits from the operation of a home might result in pressure on the operator for higher levels of food and other services.

It is beyond our ability to suggest how the public interest would be served by the public disclosure of the chemical composition of paint or future plans of arts organizations.

Nearly the same can be said for the disclosure of architects' drawings and tender documents. It may be, however, that, as with nursing homes, some failure to meet established standards might be discovered by outsiders. It may be, too, that some members of the public may find information about costs of construction materials or the like that will be of benefit to them. Other architects or contractors may learn about better or cheaper ways of doing things that would reduce the price of government contracts in the future.

It may be that some of the information about estates of deceased people subject to succession duty would affect shareholders of public corporations in certain circumstances. These instances would be relatively few, and even where they occur would probably be fairly common knowledge throughout the investment community. It could be argued that the information should be openly available for anyone whose investment might be affected, though the argument does not appear strong to us.

b) Considerations of Competitive Harm

To weigh against the advantage to the public interest in disclosure, the Commission will want to assess the degree of competitive harm that will be done to the business enterprise whose information is being released.

In the instances of elevator and nursing home design, paint composition

and consultants' proposals, the advantage of confidentiality is similar to the protection offered by patent or copyright. Public disclosure would bring with it a disadvantage similar to the loss of such protection. The results of the research, imagination, effort and expertise embodied in the information would be freely available to their competitors, with little effective remedy against their use. Although turnabout is fair play, and every business in the field will be in a position to benefit from the innovations of all others, the overall effect of free access would be to modify the rules of the competitive business world, at least to some degree.

2. Information About Businesses Generated by the Government

Some of the information contained in government files is material that government has generated itself and that could have commercial value or could be competitively disadvantageous to a business enterprise if it were released. Examples of such information we came across are the following:

- . information on the performance of elevator operators and maintenance contractors;
- . inspection reports of nursing homes;
- . assessments of printers' performance;
- . results of testing highway paint samples;
- . emission levels from factories;
- . assessments of construction contractors, architects and engineers;

. assessments of arts organizations and artists.

In all instances this information is kept entirely confidential, or at least restricted to the people to whom the information pertains. Much of this information is strictly factual -- often in the form of inspection reports -- but it also often includes professional or subjective assessments by civil servants.

Since the information is obtained by direct government action, the problem of possible drying up of data as a result of divulgence does not arise as it does with other information voluntarily supplied by businesses. It may be, however, that release of information and opinions may cause a deterioration of relations between government and the business involved, and turn what had been a cooperative relationship into an adversarial one. Nursing home inspectors, for example, make many suggestions to operators for changes and improvements that are not called for by the minimum requirements of the Act and Regulations. The alacrity with which such suggestions are adopted may in a large part depend on the degree of goodwill that exists between the parties. The public release of an operator's shortcomings is unlikely to nurture a cooperative, helpful response. In some instances we were told that the mechanics of making material available would cause substantial administrative inconvenience and some additional expense. In the main, however, the public release of the information we class under this head would probably not hinder, nor increase the expense of, public administration in any significant way.

To the extent that the opinions of civil servants form part of this information, other issues internal to the government arise. A general issue is whether the traditional anonymity of the public service should remain sacrosanct, or whether the public ought to be able to learn what sort of opinions those people hold. The arguments put forward in the course of our interviews varied widely. It was suggested, for example, that an adverse opinion of the merit of an arts organization's work could have an unwarranted damaging effect on the self-confidence, and the careers, of the people criticized. Where these views originate from people acting as jurors or assessors for the Arts Council, the willingness of top-class people to assist in this way may diminish, and the frankness of opinion may similarly decrease.

Some people interviewed said that their recorded opinions are strictly professional, and they have no objections at all to having them made public. Others said that the recording of such comments could be discontinued entirely if they were not to be kept confidential. In some cases a distinction was drawn between technical opinions and value judgments based on professional knowledge. In other instances certain professionals said that they would be severely inhibited in criticizing the work of fellow professionals if these comments were to be made public. We must conclude, therefore, that in some instances a decision to make this material freely accessible to the public will have a retarding

effect on the fullness and honesty of opinions expressed in writing by at least some of the civil servants involved in the programs we examined.

Some public interests would be fostered by the availability of certain elements of these assessments of professional and business performance. It may be argued, for example, that the safety and efficiency of elevators would be enhanced if anyone owning such a device were able to learn what the ministry had learned about the relative efficiency of elevator maintenance contractors. Similarly, tenant groups and landlords would be provided with objective information on occasions when the safety and maintenance of elevators becomes an item of discussion between them.

Inspectors' reports after visiting nursing homes, as well as the list of requirements to bring the operation into conformity with the Act, may well be of interest to patients and their children or sponsors. At present the amount of information supplied to anyone making a complaint about these facilities is absolutely minimal -- the information contained in complaint inspection reports is, by way of contrast, quite detailed. It may be argued that the most detailed information possible should be made available about the conditions under which people live in these homes. The government has not, after all, given any guarantee of the

level of care, other than establishing certain minimum levels that it attempts to enforce through its licensing and inspection program. The patients themselves, or their children or guardians, should have the benefit of the expert assessment made as objectively as possible by government inspectors. The number of deficiencies in the operation of a particular nursing home that came to light when inspection reports were made public at a recent inquest into a death at that home, for example, could not help but be of interest to anyone being in that home, or to anyone responsible for a resident. Against this argument must be weighed the possible disturbing effect that would result if patients were made aware of every infraction of which their custodians are guilty. The closed environment of a nursing home is bound, even under the best of circumstances, to give rise to some discontent among residents. The publication of management infractions can only serve to add focus and fuel to such feelings.

The information on files about the results of highway paint tests, assessments of contractors, architects and engineers and of printers could well be of interest to people who are in need of such goods and services themselves. In that these analyses and assessments have been made by professionals, at public expense, it can be argued that the resulting opinions and expertise should be made available to all taxpayers. The major reservations expressed by the people interviewed in this connection are that the assessments are not necessarily useful for private citizens, since they are based on the specific needs of government, and often the assessments are quite technical and need expert interpretation if faulty conclusions are to be avoided. While

these reservations have considerable force, much of their impact would be mitigated by an appropriate disclaimer or warning if the material were to be made publicly accessible.

Against the possible advantages to the public interest must be weighed the effect on the competitive position of the business concerned that will result if government-gathered information and opinion about business operations is made public. In every instance we have examined, the possible disadvantage of disclosure is to give a reason for someone not to buy the product or services of the business concerned. It could provide ammunition for competitors who have had more favourable reports or assessments to use to persuade customers to leave one supplier and come to them. In the case of adverse opinion about an artistic organization's work, the result may well be a decrease in the value or price of their services or products -- a fall-off at the box office. Just how damaging these reports could be will vary widely from one industry to another, and from one business in an industry to another. Much will depend on the sophistication of the industry clientele and the relative competitiveness of the field. In an industry such as nursing homes where there are waiting lists for beds for every home no matter how well run, the effect may be negligible. In a highly competitive industry like printing, the effect may be quite different.

3. Information About Individuals Supplied by Them

We turn now to look at information contained in government files that

concerns individuals under two headings -- of which this is the first. The information of this nature that we came across in our study is as follows:

- . information on current and prospective nursing home operators, including credit references and declaration of criminal record;
- . driver licence information;
- . curriculum vitae of consultants;
- . travel expense information;
- . teacher history and qualifications information;
- . succession duty information;
- . information re artists;
- . farmer information re capital grants;
- . salary information of people in arts organizations.

Virtually all this information is supplied to government in the course of applying for some benefit -- grant, licence, contract, or reimbursement. The exception is the information supplied about a deceased person and his affairs for succession duty purposes, a sufficiently different matter to warrant separate treatment.

At present, public access to most of this material is strictly controlled. A specific policy of allowing an individual to see his or her file exists now with respect to driver licences, teachers' files and travel expense information. Unrestricted public access is not allowed in any instance, though material from driver licence files seems to be easily obtained by anyone who can pay the small fee required. A policy of complete confidentiality seems to apply in the case of information about artists,

capital grants to farmers, and succession duty information.

The issue of what constitutes an invasion of personal privacy is an enormously complex one, and is addressed by another of the research projects of the Commission. Individual attitudes towards privacy vary greatly within our society. Even if an overall general consensus could be identified, it too would probably be found to change over time. It appears, therefore, that this is a field in which wisdom, rather than research, is required. In the hope that it may be of some use to the Commission, we comment on the implications that occur to us of increasing access to the kinds of personal information we examined in government files.

a) Administrative Considerations

From an administrative point of view, the implications of allowing greater public access to these files do not appear great. The only data series for which there is a substantial demand at the moment is the driver licence information, and an apparently satisfactory system is already in place to handle that. We may assume that the cost of providing information of this nature is covered by the fees charged. We have no reason to believe that the number of requests for information about specific individuals would increase substantially if it were to be permitted. It may be that requests for names and addresses for commercial purposes might occur with some regularity, but these could be complied with where feasible on a cost-recovery basis. A certain

number of similar requests might be expected to arise if information were available about names and addresses of farmers who have received capital grants. Salespeople might also be interested to learn the details of the capital improvements made and the amount of grant money for which farmers are still qualified under the program. Suppliers and contractors who have receipted invoices before actual payment would undoubtedly be interested in knowing when their customer has received the grant payment. Such requests for information would involve a certain disruption to present administrative processes, and even if added costs were fully recovered by fees, would be at least an inconvenience. There is no way of forecasting the volume of requests for such information that might be generated, though we think it is unlikely to be great. Travel expense information would probably be of greatest interest to members of the Legislature and perhaps investigative reporters, though some imaginative entrepreneurs might find ways it could be used to commercial advantage. The administrative disruption occasioned by making such information available would probably be minimal, and it is unlikely that the information would be in widespread demand.

In summary, then, the administrative implications of allowing public access to this class of information are insufficiently grave to constitute a reason in themselves for keeping the material confidential.

b) Privacy Implications

We turn to look at the nature of the invasion of privacy that would

result from an open access policy for information of a personal nature supplied to government by or on behalf of individual citizens.

One implication of freeing access that is common to all the sorts of personal information we examined is the possibility of exposing the individuals concerned to solicitations from commercial enterprises who would develop mailing or calling lists from government files. Home addresses and phone numbers are commonly found in the files and in most instances would be of some commercial interest to someone. The severity of the violation of privacy represented by the receipt of a piece of junk mail or a telephone solicitation is a judgment to which responses will vary. People who pay a premium for an unlisted telephone number obviously cherish a degree of freedom from uninvited communications that many others value little. The issue of the degree of responsibility a government has to safeguard the anonymity of its citizens is one with which the Commission will have to wrestle without significant input from at least this project group.

The amount of personal information contained in the files we examined varies considerably. It invariably contains name, address and sometimes, telephone number. Information supplied by drivers includes age, sex, height and so on. Some of this kind of information will be considered private by a number of people who are indifferent to having their mere names and addresses made public. A similar reaction may be expected from teachers seeking Ontario certification, the details of whose education, qualifications, citizenship and professional background is provided for government files.

Apart from the injury of receiving unwanted mail solicitations -- which is no injury at all to those people who find the subject of the solicitation of interest -- there may be some more clearly unappreciated uses to which information about individuals in government files could be put. There may be some school jurisdictions where a challenge could be marshalled to the tenure of teachers who have survived a layoff for redundancy by those who had not, but collective agreements between boards and teachers now usually contain provisions for deciding who will be the ones to go in such circumstances.

It seems unlikely that any operator of a nursing home could be damaged by the release of the personal information he has supplied to the ministry in the course of applying for a licence. Dun and Bradstreet information is available to anyone prepared to pay the fee, and bank references are relatively easy to obtain. The declarations of freedom from criminal record are unlikely to be embarrassing to anyone who has not overlooked a prior indiscretion. Where the reporting has not been entirely candid, some harm could be possible through allowing access to ill-wishers -- though here the damage to the public interest that would result from the revelations is unclear. Indeed, it could be argued that it is in the public interest for such information to come to light.

The personal information given by farmers in connection with an application for a capital grant is minimal. One item that clearly should be examined with care is the declaration about income. Many people would undoubtedly object to having that information released -- a stance that would probably gain broad popular support. The difficulty could easily be overcome by

a change in the wording of the form: all that is required under the terms of the program is that the income from the farming operation be above a certain minimum -- \$3,000 -- and a simple declaration to that effect would suffice. Indeed, the ministry accepts such a declaration now in many instances. Ministry officials interviewed were concerned that addresses of grant recipients be kept confidential, to protect farmers against commercial solicitation. This is the only grant program of which we have knowledge that does not publicly identify recipients. The Commission should weigh the public interest in disclosure of this information against the possible disadvantage to the individuals concerned that could arise if their identity were revealed.

The only other instance we examined where public access to this class of information might cause discomfort is the travel expense claims of civil servants. While it is true that those bureaucrats who spend over a minimum amount annually -- now \$2,500 -- have their total expenditures reported in the Public Accounts, the details are not now available. It is conceivable that some awkwardness could be generated by public disclosure. Here again, the public interest in openness may run counter to the personal and governmental convenience in maintaining confidentiality. These accounts, after all, must be approved by the employee's supervisor, and are subject to both Management Board regulations and audit. If items slip through, it may well be in the public interest to know about it.

It seems to us unlikely that there could be any personal harm done to artists or to consultants if the information they supply about themselves were made available to the public. For consultants, indeed, we expect

they would be pleased if their credentials were made more widely known.

We mention above that succession duty information warrants separate treatment. Such information is not supplied by the deceased, and in fact often contains information about a number of other individuals. In certain instances, the information collected can disclose the identity of lovers, or illegitimate children, and a host of other information about the personal circumstances of the deceased and his or her relationships. Especially where estates are complex, the information collected to assess succession duty can be voluminous and detailed. It can contain a variety of information of a personal and financial nature about both the deceased and living people. The only argument that we think could be put forward in support of disclosure is the public audit of the duties assessed. The Commission should balance this possible benefit to the common weal against the security people in our society have always assumed is implicit for information supplied for tax purposes.

4. Information About Individuals Obtained by the Government

Apart from the sort of information discussed above, which is supplied by individuals, the government itself also generates and collects information on citizens. The examples of this that we came across in our study are:

- . driver history, convictions, points, etc.;
- . assessments of consultants;
- . information on certain patients in nursing homes;
- . assessments of artists;

- . information on payments to teachers under the federal-provincial bilingual program;
- . assessments of performance of certain staff in nursing homes;
- . information on teacher status and performance from other jurisdictions.

With the exception of the driver licence information, which is available to the extent appropriate to people who can demonstrate need, this information is now kept confidential by the government branches interviewed. In some instances individuals have a right to see their own files -- e.g. driver licences and teachers files -- in others they have not.

This class of information tends to be more substantive in some instances and more detailed in others than the class of personal information discussed above, which people supply about themselves. Actual records of convictions, for example, are contained in the driver files, while the information about criminal records of nursing home operators is a mere declaration by the individual concerned. Another characteristic of this class of information is that it often contains the personal or professional assessment by civil servants of the competence of people in the private sector. Bureaucratic comments on consultants' work and on the competence of nursing home staff are examples. In the reports of investigations of incidents in nursing homes information on the medical condition and history of residents is often recorded.

a) Administrative Considerations

In terms of the administrative problems that would be created by allowing greater public access, this class of information is similar to the previous one. It is unlikely that such a large demand would be created for most of it that new staff or facilities would be required. The exception is the driver licence files, which are discussed in the previous section, and about which, for this class of information, the same reasoning applies. It seems likely that the provision of public access would cause some minor administrative inconvenience, but that most added costs could be recovered through fees.

b) Privacy Implications

Although access is currently allowed to driving records, it is doubtful if some people would appreciate having all the information contained in the driver files revealed. In instances where an employer or prospective employer seeks confirmation of a person's statements about licence standing, points, past convictions and the like, probably few individuals who had been genuinely candid would object to the ministry providing the substantiation. Individuals who omit reference to previous indiscretions may not be pleased that such checks are possible. A particular issue is raised by the inclusion in this information of convictions under certain sections of the Criminal Code where conditional or absolute discharges have been granted. The criminal conviction material on non-driving matters collected for school bus driver applicants,

and the medical files are not now released by the ministry. It is certain that a change in this policy would be viewed as an invasion of privacy by many whose records would thereby be made public.

Clearly there are certain interests that would be fostered by allowing some greater public access to these driver files. At the very least, certain driver schools may find it advantageous to have access to the names and addresses of people whose demerit points have risen to an imperilling total. Optical companies would similarly be interested in the identity of people whose opticians have reported a degree of visual impairment requiring glasses. An organization specializing in helping people with drinking problems would be aided by access to lists of people who have been convicted of driving while tipsy. This last kind of information could be obtained, but with some difficulty, from existing court records. The rest, however, is not likely to be publicly available elsewhere. The invasion of privacy represented here if open public access were to be allowed consists not just in the possible future exposure to commercial solicitation, but also in the transmission of what many people hold to be private personal information. There are certainly instances, not difficult to imagine, where such information could be used to the detriment of the person to whom it pertains. Even though the information -- or some of it -- could be obtained elsewhere, there are many who would object to government becoming a source of it. In our view there would be widespread dissatisfaction with a government policy that allows all this kind of information to be made public, especially in light of the absence of any general public benefit.

The assessments of certain classes of individuals and their work raises just the same issues as similar assessments of contractors, architects and so on discussed in a previous section under "Information About Business Generated by Government" (p. 107). Undoubtedly where the assessments indicate satisfaction with the work of these people, it could be construed to be in their interest to have it released. People whose work is admired by government may want to quote the assessments, thereby placing the government in the position of being used to put a "seal of approval" on the individual. Members of the public who want to get assessment of people practising in a field may well be assisted by governmental evaluations of performance. Assessments might also be of occasional interest to such people as members of the opposition who may use evaluations to question or embarrass the government.

Governments are understandably reluctant to be put in a position of commenting on the relative merits of individuals, partly because they prefer to remain neutral between competing elements of the private sector, and partly because they do not want to release opinions that, though useful for internal administrative purposes, are not necessarily invested with full ministry approval and that might be misleading when used to evaluate people for different tasks in a different environment.

To the extent that the comments may be used to embarrass the government, or to draw its judgements into controversy, the release of such material will be resisted. It can be expected that if the material were to be made accessible to the public, the frankness and fullness of these

evaluations may suffer, with a corresponding diminution in the efficiency and effectiveness of administration. Some resistance to the release of this information may be met from people outside government. People who are not ranked at all may think it unfair that their competitors are provided with a selling tool that they lack. Others who are ranked poorly by the civil servants, will certainly not want the fact disseminated widely.

If access to civil service evaluations of individuals is permitted, the question arises of the possibility of challenge to the assessments by the people concerned, or others, and the issue of whether the government should be required to amend its records in this respect if the challenge is successful.

To the extent that the inspection reports on nursing homes include comments on the performance of individual employees, operators of homes who are looking for new staff may have an interest in checking the reports on the homes of other operators. Similarly, staff who are looking for jobs elsewhere could use relevant parts of the reports to demonstrate their satisfactory performance.

Other than those mentioned in the previous section of this report, we can identify no specific interests that would be served by allowing public access to the material collected on teachers applying for Ontario certificates. Similarly, the information about the fees paid to people teaching under the bilingual program or about the medical condition of nursing home residents is unlikely to be of direct benefit to anyone.

Allowing free access to assessments of artists' work could probably be of interest to such people as gallery owners, potential purchasers whose eye is on investment as much as art, and the like. Simultaneously, favourable appraisals might be used by artists in support of the sale of their services or products. Since the amount of this kind of material in the files of the Arts Council is very limited, the actual advantage that might possibly be gained is small indeed. Against this gain to the public interest must be set the possible damage to the self-confidence of an artist who has fared poorly at the critics' hands, and the almost certain reluctance of many people to act as evaluators or judges in the Arts Council's competitions if their detailed comments are to be made public.

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In none of the examples of this class of information we have examined, then, is the public interest apt to be fostered in any major, specific sense by opening the files to the public. In many instances the interests of the individuals concerned would be adversely affected in some -- usually small -- degree, though those of others could be fostered. Especially where the material includes the value judgements of civil servants, there is likely to be a reluctance on the part of the government to release it, for the reasons mentioned above. It is also likely that the frankness of written assessments may suffer if they are to be made public.

5. Other Government Documents

Many of the documents the government creates are discussed in the preceding sections because they contain some information about specific businesses or individuals. There remain, however, many items that pertain solely to the administration of programs and do not identify particulars about people outside the government. The following is a list of the materials of this nature that we examined in the course of our study:

- . contract specifications, working drawings and similar documents used in construction contracting;
- . terms of reference of personal service contracts;
- . reports of studies contracted for by the Ministry of Culture and Recreation;
- . correspondence and all documentation in municipal subsidies and the inspection of municipal sewage programs;
- . working papers, invoices and the like involved in making claims under the federal-provincial bilingual cost-sharing program;
- . technical research material and associated documentation leading to the establishment of air and water standards by the Ministry of the Environment;
- . material generated in the process of setting industrial health and safety standards by the Ministry of Labour;
- . booklet outlining requirements of the Ministry of Transportation and Communications regarding highway paint, and list of approved suppliers thereof;
- . background information on the need for nursing home beds in

specific regions, proposal documents, scoring system for assessing applications for building and operating new nursing home facilities;

- . manuals, forms, memoranda, minutes and reports involved in the budgeting and financial management processes of government.

Current policy governing public access to these materials varies from strict prohibition to automatic dissemination. Some of the information is of obvious direct interest to people outside the government, while some of it would probably be of interest only to a very few students. Because of the range of the kind of material in this class, it is necessary to examine each. We discuss the documents program by program.

a) Construction Contracting Documents

There are several classes of documents generated within the government connected with construction contracting that have not been discussed in other sections of this chapter. These include the forms and reports of the government ministries' plans for future construction at various stages of specificity; reports on status of current projects; surplus accommodation reports; internally developed detailed descriptions and cost estimates of specific buildings; instructions to, and agreements with associate architects; working drawings and specifications; tender requisition forms; and recommendations for tender acceptances.

For most of these documents there is currently no provision for public access. Some, of course, are made available to the associate architects

so they can do their work, and the working drawings and specifications are given to contractors who are preparing tenders. These latter documents are also available in the Public Tenders Office to anyone who wants to see them. The "Blue Book" of programmed future construction projects is distributed to MPPs and frequently enjoys a "pass along" circulation.

The reports supplied by ministries on their future needs and expected surplus accommodation could be of interest to people in the real estate business, as they signal future activity by the government. For example, a developer might see an opportunity for profit in a report that a certain ministry wants to build a large facility in a certain location for which there is currently no government-owned land available. Alternatively, someone intending to construct an office building might be given pause if he learned that a substantial amount of government-occupied space is likely to be vacated in the same area. Whether such advance warning should be considered a good or a bad thing is an open question. It can be argued on the one hand that if the information is available to everyone, then no preferential treatment is given, and it is in keeping with the philosophy of private enterprise to allow alert and intelligent entrepreneurs to use honestly gained information for their own advantage. In some instances, indeed, the information could be useful in avoiding mistakes that could lead to inefficient resource allocation, losses and possible bankruptcy. This surely could be seen to be in the public interest. On the other hand it could be said that the information could be used by speculators whose activity, if successful, could increase the cost of government buildings -- a private

gain at public expense. In addition the long-term plans are not necessarily apt to come to fruition, as changes in policy and priorities may substantially alter ministries' construction plans. In any event, the "Blue Book" contains a summary of construction plans, and anyone with sufficient interest and initiative can get to see a copy of that.

The preliminary estimates, design specifications and alternatives reports are working documents necessary for giving proper instructions to the consulting architect. It is unlikely that they would be of interest to anyone other than the architect and, possibly, contractors who subsequently prepare tenders for the job. The release of the preliminary estimates could have the effect of reducing the competitiveness of tenders, although, because they are tentative and meant only as an internal guide, this result is by no means certain. It could be argued that the estimates could help tendering contractors to meet government expectations more exactly, thereby ensuring a more completely satisfactory product.

The reports recommending which tender should be declared successful and which architects should be used are forwarded to the Deputy Minister and Minister for decision. In instances where the lowest tender is not recommended, the reasons are given, and usually pertain to some sort of unsatisfactory past performance on the contractor's part. The argument for keeping these confidential is that they are documents in which advice is given by civil servants to a minister, and should be privileged. In addition, the successful tender is announced, and if the lowest is not chosen the reason is given in the ministry's annual report. The argument

for allowing access is the general one of open scrutiny of government operations.

It seems unlikely to us that, if access were freely allowed to all the documents used in the construction contracting process, the demand for them would be great. To the extent that the demand would arise, however, it could create some administrative difficulties, since different materials relating to a single project are filed in several different locations in the ministry. The expunging of certain material, such as the assessment of the performance of the consulting architect, would cause further difficulty. That difficulty could be overcome in the future by filing such material separately if general access were to be permitted with certain specific items exempt.

b) Contracting for Personal Services

Consulting work done for government ministries, and the documents surrounding the contracts, are generally kept confidential in the instances we examined. Release of the result of a consultant's or other professional's contract is entirely at the discretion of the contracting ministry. It is not the practice to allow access to any of the internal ministry documentation and, indeed, the very fact that the work is being, or has been, undertaken is kept confidential in some instances. The range of purposes for which personal service contracts are let is very wide, even in the two ministries in which we examined this process -- Energy, and Culture and Recreation. For contracts

under the limit established for the purpose it is possible that the payment for a contract would not even be reported, except aggregated with others, in the Public Accounts.

In some instances, the release of the reports could have a deleterious effect on some part of the public. A feasibility study of a particular industry in a specific community could, for example, report local deficiencies that might discourage the establishment of new enterprises in the area. It could be argued in refutation of this point that the information contained in the report should be available to guide prospective investors, and that it is in the public interest to have investment decisions made on the basis of as full information as possible.

Some of the reports done by consultants are primarily factual, others contain varying proportions of policy advice. As such, they vary little from the reports that might be prepared by ministry personnel. Indeed it is common practice to use consultants when some expertise is needed that is not available within the government, or -- perhaps more frequently -- when the workload of ministry personnel is such that outside help is required. Sometimes an outside opinion is wanted to give an additional perspective to policy consideration. For those contracts that result in reports, we can see no compelling reason to treat them any differently from reports prepared within a ministry (this subject is considered in the Commission's research on policy-making). Release of policy-oriented reports immediately on their completion could, for example, cause pressure to be put on the government to act before it had a chance to explore all alternative courses of action.

It is not so clear that the existence of contracts of this nature should be kept confidential. It would be no difficult thing to make the terms of reference, the firms or individuals competing, and the contract price available. The release of this information would likely give rise to demands for the release of the reports, which could then be handled in the appropriate manner. For the educational material contracted for by the Ministry of Energy, any additional publicity that might arise would probably, provided the material is satisfactory, serve to foster the objectives of the program. Knowledge and release of material that is unsatisfactory could embarrass the government and could harm the reputation of the contractor responsible. This would probably be considered to be entirely appropriate by many, and could even lead to more care being taken in letting contracts -- a definite gain for the public interest.

c) Federal-Provincial Bilingual Program

The material involved in preparing and making claims to the government of Canada under the bilingual cost-sharing program is not apt to be of interest to many other than an occasional student with a very particular study and an occasional elected official or reporter seeking documentation for a point of view. In the unlikely event that everyone wants to see the information, it could easily be made available, without jeopardy to either administrative efficiency or a public interest in confidentiality.

d) Ministry of the Environment's Dealings with Municipalities

Some of the material involved in the Ministry of the Environment's dealings with municipalities regarding water and sewage matters is now publicly available; some is not. "Unofficial", informal correspondence, for example, is kept confidential. These documents usually involve questions about technical problems a municipality has asked help in solving. It is possible that release of such material might reflect poorly on the competence of the local officials. There is also the general question of the propriety of unilateral release of correspondence by one of the parties to an exchange. On the whole, it seems doubtful to us that any great damage could be done anyone if this material were made publicly available, and it is also doubtful that much of a demand for it would arise.

Reports on analysis of seriously deficient municipal water and sewage samples are usually kept confidential. By not releasing these results the ministry allows the municipality to correct the inadequacies without being publicly embarrassed. If the deficiencies are not corrected, the ministry will make the situation known -- if necessary at an open council meeting of the municipality concerned. To the extent that good-will helps foster the cooperation of municipalities to achieve the ministry's objectives, the current policy is probably one that is suitable. It is not certain, however, either that cooperation would be less if the public had a right to learn about all sample results, or that the public interest is served by permitting knowledge of unsatisfactory conditions to be kept confidential. As with all technical matters, it is possible

that the release of stark figures could lead to misunderstanding of the significance of the reports. If the figures are to be released, it might be considered advisable to have them accompanied by certain -- perhaps standard -- explanatory matter. Even though the release of the information about unsatisfactory samples might create substantial public controversy in some instances, we doubt that the actual number of requests for such information would be sufficient to create an administrative burden of any consequence.

The documents dealing with the approval of provincial subsidies for local water and sewage treatment facilities will probably not be of wide public interest. It may be that the information may be of use to certain commercial enterprises, though most of it is probably available directly from the municipality anyway. Since decisions about eligibility for grants can have a noticeable impact on local municipal finances, there is likely to be considerable interest in some applications by local political figures, and perhaps MPPs. It is our understanding that the status of consideration of grant applications is now easily obtained by anyone interested. Access to the actual documents could serve to add fuel to political controversy, or, in other circumstances, to cool it down.

Certain internal memoranda generated in the water quality control program contain the frank and professional opinions of staff members. Such opinions could be construed as advice, and become subject to the same considerations as other documents involved in the policy-making process. It could be argued that the public interest could be served by allowing

people to see the kind of professional advice the government receives. As with similar documents in other programs, however, it is possible that the knowledge of future release might make their contents more cautious and less comprehensive. Such a result is not, however, by any means certain.

e) Developing Industrial Health and Safety Standards

Few processes could be more open than that through which the Ministry of Labour goes about developing industrial health and safety standards. With the proposals published in the Ontario Gazette, as well as distributed to interested parties, and copies of all relevant material available in the Legislative Library, one could hardly ask for more. Since people who offer comments know that their responses will be made public, there is no problem of a breach of confidence. There are undoubtedly some internal memoranda and the like that are not placed in the library, but they are unlikely to be of much consequence or interest to outsiders.

As an aside, it is interesting to note that the ministry now posts its safety inspection reports and requirements in work places, thereby giving access to these to the employees. We can conclude, therefore, that the ministry thinks that this action is sufficiently more apt to encourage correction of deficiencies than it is to lead to misinterpretation or feelings of antagonism. In addition, the inspector's name appears on the report, so that anonymity is apparently not thought to be an

important issue. It is intended that a similar procedure will be followed with health inspection when the regulations become law.

f) Highway Paint Testing

The booklet containing the Ministry of Transportation and Communication's requirements for highway paint is, of course, distributed to anyone interested.

g) Nursing Home Licensing and Regulations

As with most other material involved in the process of licensing and inspecting nursing homes, the internal documents are mainly kept confidential. The proposal documents for new homes are made available to people interested in making a proposal, but other material is not. The background material on which a decision to allow more nursing home beds in a specific area, for example, is kept confidential. These documents, prepared by the local District Health Council, the local hospital, and the ministry, contain the factual demographic and institutional information on which decisions about new beds are made. This information could be of interest not only to people who have to decide about whether to make a proposal in application for a new licence, but also to people in those parts of the province where no, or few, new beds are to be permitted. To the extent that the reports are used by the ministry and Management Board to make decisions, they are part of

the decision-making process. It should not be difficult, however, to design future reports so that the factual material can be separated from the conclusions and advice.

The scoring system used to assess applications for new nursing homes is not made public. It is argued that ignorance of the weighting put on various aspects of the proposals encourages applicants to strengthen all aspects of their submissions, with the result that nursing homes of higher than required quality are built. A counter argument is that if proposers knew which elements of a proposal the ministry thinks are most important, they will be able to bolster those aspects and thereby offer a superior product. It can also be argued that to keep this rating system secret is unduly paternalistic, and that the ministry is thereby seeking standards that are beyond those it is charged with administering under the terms of the Act and Regulations. Ministry officials interviewed think that, on the whole, better homes will be built when applicants are competing without knowledge of the scoring system, and that the public interest will thereby be fostered. There would be no administrative difficulty in making this scoring system public.

h) Financial Management and Accounting

The large volume and variety of material that is created in the process of the government's financial administration systems is described in a previous section of this report, and is not repeated here. In general, the

documents generated in the budgeting process are considered to contain policy development material and, accordingly, are kept confidential. We leave consideration of these to the Commission's study of policy-making activity.

Quite different considerations apply to the reports, manuals and other documents involved in controlling and accounting for expenditures and revenues. For many of these documents there is currently no established public access policy. This probably results from two factors: aggregated reports such as the Treasurer's quarterly report and the Public Accounts are released; and since few people are interested in learning more detail than is available through these published sources, the need for a policy has just not arisen. Where policy is lacking, response to requests is apt to vary. We were given different answers, for example, to the question of whether the Management Board's Manual of Administration is available for public scrutiny. Since the Manual is lodged with the Press Gallery and with certain libraries around the province, there is clearly no perceived need for confidentiality for this document by senior staff; yet we were told by two officials that it was restricted to civil servants.

In our view it is unlikely that there will be much impact resulting from the establishment of a clear policy of public access to all the material generated in the financial administration (as distinct from the budgeting) process, including manuals, variance reports and the like. Because most of the important information is already published, it is doubtful that many requests will occur. Those that do should not

create a significant administrative problem. For some documents -- such as the Manual of Administration -- it may be that the policy should be a public right to see and examine, but not be provided with a copy. The reason for this is that that Manual, and probably others, are constantly being revised and updated. An out-of-date manual is a misleading document, not just a neutral one. The commitment to keep the manual current is one that has concerned Management Board in assessing requests for copies of the document in the past, and will certainly continue to do so. It is not in the government's interest to have obsolete manuals in circulation or to increase the costs of distribution of updating material.

If all the financial administration material were made publicly available, there may be some concern on the part of civil servants whose specific program management will be more visible than currently. It is difficult, however, to understand how the public interest will be thereby damaged.

CHAPTER IV

CERTAIN ISSUES

As we mention in a previous section of this report, the Commission will have to come to a conclusion about the general philosophic approach it is to take to the issue of how much public access should be given to government files and documents. Put baldly, the two extreme polar positions might be stated as "Government is elected to govern, and should be able to decide for itself what should be released in the public interest -- if people don't like the decisions they can elect a new government at the next election", and "The material the government has has been collected at public expense and should be available to the taxpayers who have paid for it. We want to see for ourselves what kind of a job the government is doing." It is interesting that at one time or another each of those extremes, and many positions between, were expressed to us by civil servants during the course of our study.

Underlying the first position is a deep faith in the benevolence of government and of public administration, supplemented by firm confidence in the sensitivity and effectiveness of the democratic process. It is a view that is based on trust and a belief in the basic decency of human nature. The opposite view is held by people who are more suspicious of the effect of political and bureaucratic pressures on the decisions of the basically ordinary people who run our government. They tend to

think that government should have nothing to hide, and that nothing should be hidden. They believe that, since government affects people so deeply in many ways, and costs so much, the public has a right to know as much as possible about how the government operates and the information and opinions on which it bases its decisions. In addition, supporters of this view claim that much of the material in government files could be of interest and use to people outside government, and that this resource should be available to the public who have paid for it.

There is, of course, some meeting between the two poles. Supporters of the "closed" approach agree that certain information should be made public automatically, and people espousing the "open" approach acknowledge that certain information should be kept confidential. The differences in policy terms are over the questions of how much government material should be made public, and whether access should be established as a matter of right through enactment of legislation, or by administrative direction at the discretion of Cabinet.

1. Legislation or Administrative Policy

With the current trend, even in jurisdictions with parliamentary systems of government, to adopt some kind of freedom of information legislation, the recommendation of a similar course for the government of Ontario is one that the Commission will have to examine carefully. Many of the considerations that will have to be taken into account in this regard are outside the terms of reference of this study, and will be discussed

in other reports prepared for the Commission. There are, however, one or two observations we can make as a result of our own work that may be relevant to the question.

It is clear from our study that for a substantial portion of the material we have examined the government has no established policy regarding public access. In most instances this is undoubtedly the result of the absence of a need for one -- the issue has never, or very seldom, arisen. When no policy exists, decisions are left to various officials whenever queries occur. The result, of course, is that there is no consistency in response. People making inquiries are often asked to explain the reasons they want the information and the uses to which it will be put (this happened in several of the test inquiries we made). Where this occurs it seems apparent that the official receiving the request thinks there is a responsibility to guard the information, and that the material is not automatically in the public domain. Even where a policy is thought by senior management to exist it may not be known and followed by everyone. A clear example of this is the different replies we got to the question of access to the Manual of Administration produced by Management Board.

2. Legislation or Administrative Directive

In the light of our findings it must be asked whether an administrative directive is apt to be as comprehensive and as fully implemented and observed as would legislation. In our view there are few theoretical

advantages that one method has over the other. An administrative directive could be couched in terms quite as comprehensive as legislation, and might indeed be even more detailed. It could also be given broad and recurring publicity and circulation both within the bureaucracy and publicly. Whether this would, in fact, lead to as widespread knowledge of the policy as would occur if it were put into a statute is debatable, but with a sincere effort on the part of the government it could come close.

From an administrative point of view an administrative policy directive from Cabinet is clearly preferable. It is a more flexible device, and can easily be amended in the light of experience. It can more easily be shaped to the particular circumstances of different ministries. It could be used to develop a system that, with some years' experience, could evolve to a point where legislation could be adopted -- legislation that would neither subject the administration to a sudden shock, nor require the kind of extensive litigation to clarify that has been necessary in the United States. Such legislation, when it is brought forward, would almost certainly better suit the particular circumstances of the Ontario government, and be better understood by legislators, bureaucrats and the public than would legislation brought in without such a developmental period preceeding it.

From the point of view of the actual freeing of information, it is by no means certain that legislation is preferable to Cabinet directive. Knowing that it has the ability to change policy without approval of the Legislature, and that the final discretion for release of any particular

document lies clearly in its own hands, the government may well be prepared to authorize the general release of material under a policy directive that it would not permit to be included in statutorily enforceable release provisions. The result may well be that more material would be forthcoming through a voluntary policy of openness than through a more narrow legislative right to access.

The main argument for the adoption of legislation right from the outset is the certainty that accompanies the method. While it is true that a policy directive might be as comprehensive -- or moreso -- than legislative provisions, and that a policy directive could be so publicized that it is as well-known as a statute, these things are by no means certain. It is considerably more difficult in every way -- including politically -- to amend a statute, especially if it is to diminish a right, than it is to change an internal administrative policy. A statute establishes something that cannot be quickly or quietly changed in any substantial way. With a statute one does not have to rely on the continuing good intentions of the government currently in power. And a statute is something definite with which anyone can face a civil servant who is reluctant to comply with a request for information.

No matter which course of action is decided on, it will probably be necessary, and certainly advantageous, if each ministry establishes clear interpretations of the general guidelines for its own material. It is important that these interpretations should be clearly understood by the people handling the material in question. It is also important that there be as much consistency as possible among the ministries in

making the interpretations. Accordingly, it may well be that the government will want to establish some mechanism for ensuring this consistency. This task might, for example, be given to Management Board, or, if such a thing is to be established, to an official or office responsible for coordinating and/or ruling on information matters. It could be agreed that with legislation such a central clearing mechanism would not be necessary. While this may be so as far as strict legal technicality is concerned, some central mechanism may well be thought useful, especially in the initial period of operation of the statute.

3. How Much Access Should be Allowed

Most of the remaining issues to be discussed pertain to the other major question of who should be allowed to see what. The advantages and disadvantages of permitting access to specific government files and documents examined in the course of our study are discussed in previous parts of this report. In this section we discuss the exemption provisions of the U.S. Freedom of Information Act in an attempt to identify the likely application of similar provisions to the sorts of material we have identified in the course of our study. The American statute is taken as the model, since it is the one with which Canadians are most apt to be familiar.

a) Classified Documents Concerning National Defence and Foreign Policy

Little of such material is apt to be found in the filing cabinets of the Ontario government. To the extent that they are, or to the extent that parallel material relating to intergovernmental affairs and security matters are in the files, they fall under the terms of reference of other studies undertaken on behalf of the Commission. We came across no such material in the course of our study, though undoubtedly others will have done so. We leave it to them to comment.

b) Internal Personnel Rules and Practices

The purpose of this exemption would seem to be to avoid a variety of requests for relatively trivial information in which no great issues of public interest are apt to be involved. Although we avoided examining personnel matters per se, since they are a subject of investigation of another project group, we did come across some material that would probably be covered by this exemption. Travel expense claims are an example.

Most of the matters covered by this exemption are likely to be the subject of written directions, and will frequently be found to be in systematic order in such things as manuals or series of administrative directives. It seems doubtful to us that there would be a large demand for this kind of information if it were to be allowed to be made public. It is possible, of course, that private organizations facing a need for

policies of this nature would like to know how the government handles specific circumstances. It is also possible that people with a specific point of view may want to use such material to question or embarrass the government. On the whole, we see little harm that could be done by allowing the release of this kind of material, and can find no convincing argument to support its protection.

c) Information Exempt Under Other Laws

Little of the material we examined is specifically prohibited to be released by statute. Succession duty information is an obvious exception. Other work done for the Commission has identified approximately 124 Ontario statutes that contain provisions prohibiting the release of information. Clearly, if a coherent and consistent policy is to be adopted it will be necessary to review those provisions with a view to making amendments in those instances where change is indicated. An alternative is to have the general freedom of information legislation, if such a statute is enacted, contain a provision overriding the specific provisions in other statutes. The material previously protected by those statutes could then be subject to the same tests as all other material. Nothing we have come across in our study leads to identify a clear advantage from either approach. If legislation is not to be implemented, however, and administrative direction used instead, it will be necessary to amend the individual statutes whose provisions require a greater degree of protection than is countenanced by the overall policy.

d) Confidential Business Information

As described in a previous section there is a great deal of material in the government files that contains currently confidential business information. Even in the few programs we examined, we identified instances where confidential business information is supplied to government that is of considerable value to the operation of the programs concerned. We are confident that much of this material would not be forthcoming if the government stopped giving an assurance of confidentiality. That the efficiency of government administration would suffer if this were to happen is certain.

There are, of course, a variety of issues that must be considered in connection with this class of business information. Because the Commission has the advantage of a separate study specifically on this subject, we do not explore the other relevant issues here.

e) Internal Communications

The purpose of this exemption in the American law is to protect the confidentiality of the decision-making process, thereby ensuring that full and frank exchange of opinions within government will not be jeopardized. The exemption does not apply to purely factual material except in narrowly defined circumstances.

Obviously this exemption is one that will be of great interest to the

Commission's policy-making study. We leave the discussion of that aspect of its implications to that report. There are, however, other implications of such an exemption that must be discussed here.

In the course of our study we found several instances where civil servants provide advice and opinion in the course of the on-going operation of programs. Frequently, as with much material we examined, there is no formally established policy regarding access to this material. In some instances, particularly where the opinion or advice is of a strictly technical or professional nature, the people interviewed said that they would not be affected in their work if the documents in question were made open to the public. In other instances we were told that the fullness and frankness of opinions offered might well suffer. It is our conclusion, therefore, that if all this kind of material were to be made available to the public, there would be some effect on administrative practice. It may well be, for example, that more opinion and advice would be given in oral rather than written form.

Practice in the Ontario government regarding the release of purely factual material is not consistent. Even within a single program policy may vary depending on what the implications of the facts are. The withholding of information about seriously bad test results of municipal water and sewage samples while all others are released, is an example. The background demographic and other material on which decisions about new nursing home beds are based are not released, while the factual basis for setting water and air standards, and industrial health and safety standards are.

It seems to us that very little harm would be done if a policy were adopted to release all factual material. In some instances, of course, this material is enmeshed in documents that also contain policy advice and recommendations. Reports of experience in the U.S. indicate that it is not particularly difficult or disruptive for reports to be written in such a manner that the factual sections can be easily separated physically from the portions containing advice. We see no reason why a similar practice could not be adopted in Ontario, and doubt that it would cause any significant disruption to administration.

A particularly strong case can be made to allow access by an individual or organization to factual information that pertains to him, her or them. In some instances, such as assessments of performance by private professionals or businesses, this may require a change in the way reports are prepared. If an open access policy is adopted for this kind of material, care should be taken to see that the effectiveness of administration is not thereby damaged. The process of awarding grants to arts organizations may be used as an example. We think that the reasons for keeping confidential the advice of outside evaluators override the advantages of allowing an arts organization to see the report that is provided. In our view what the organization should be able to see is the factual portion of the report prepared by the Council officer for consideration by the Council. This, after all, is the document on which decisions are based, and is the one whose factual accuracy really matters to the organization concerned. Such an arrangement should satisfy all interests, without damaging the effective administration of the program.

f) Protection of Privacy

A number of the issues raised by the release of personal information about individuals are discussed in a prior section of this report. Since this subject, too, is the subject of a separate study undertaken by the Commission, we shall not explore it further here.

g) Investigatory Files

This exemption in the U.S. statute protects from disclosure:

"Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication, (c) constitute an unwarranted invasion of personal privacy, (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (e) disclose investigative techniques and procedures, or (f) endanger the life or physical safety of law enforcement personnel."

Although the scope of our study deliberately excluded anything to do with criminal law enforcement and the administration of justice, we did come across several programs in which investigations to determine whether law is being respected are a regular feature. Inspections of nursing homes, and of elevators, and of working places in regard to health and safety standards are examples. Current practice regarding release of inspection reports varies: the Ministry of Labour is required to post the results of safety inspections in a prominent position in the working place, while only ministry staff and the operator concerned may know the results of

inspections of nursing homes and elevating devices.

If Ontario adopted the approach that results from the U.S. legislation, all these reports would become public. The implications of doing this are discussed in previous portions of this report, and the arguments will not be repeated here. It is clear, however, that, while the arguments for releasing these reports for public interest reasons are strong indeed, some of the civil servants involved in administering the programs are convinced that their effectiveness will be diminished if the confidentiality of these documents is violated.

If the Commission concludes that inspection reports of the sort examined in this study should be public, then it seems to us that the sort of conditions established by the U.S. legislation are quite appropriate. To release reports that would interfere with enforcement proceedings, disclose a confidential source, or disclose investigative techniques thereby making detection of non-compliance more difficult would all be contrary to the purpose of the whole exercise. To release material that constitutes an unwarranted invasion of privacy, deprives someone of a fair trial, or endangers the life or physical safety of civil servants is, in our view, to put too high a value on the public interest in the release of that material.

h) Information Concerning Financial Institutions and Concerning Wells

These two exceptions under the U.S. legislation are designed to protect specific kinds of confidential commercial information. Although we did not examine any programs whose material would be protected by such an exemption, we see no prima facie case for treating these specific industries any differently from others. We expect that this subject will be explored by the Commission project report on commercial information.

4. Information About Information

A point of view often expressed in the discussion of freedom of information issues is that however open access may be it is only as useful as is the availability of knowledge about what information or material exists. The force of this point of view is acknowledged in the U.S. legislation through a requirement that branches of government maintain and publish an index of certain kinds of material in their possession. In essence, the U.S. scheme requires the publication of descriptions of the organizational structure of the various agencies of the government and their policies and procedures as well as indices of materials such as decisions in specific cases and staff manuals which could affect a member of the public. As might be expected for an organization as large as the government of the United States, even a requirement of this kind has resulted in the publication of massive

documents which may in many instances, require expert interpretation.

If the Ontario government were required to publish similar material and indices, it would, of course, not be nearly as voluminous as the American one. It would, nonetheless, be a substantial and costly undertaking.

From the government's point of view, requirements of this nature would have the advantage of forcing ministries to discover the extent of materials in these categories that they now have. On a more general plane, records management work has made substantial strides in the relatively recent past throughout the government. nevertheless, there still does not appear to be a complete accounting of existing material compiled anywhere. Prior to the start of our interviewing process, for example, the Commission was supplied with computer print-outs of all government records identified in the records management program. In the course of our interviews it became clear that a substantial number of records and files are not included in the list provided.

At present there is no completely comprehensive list of material that is now available to the public. We are told that in at least one instance -- Treasury -- a ministry releases a list of statistical material available within the government and an abridged list for public circulation.

Certainly the effectiveness of any new freedom of information policy

will be in part dependent on the availability of information about what material exists. The consideration of means through which this can best be done, and of the administrative implications and costs of alternative approaches, are outside the terms of reference of this study. We urge that the administrative implications of alternatives be given appropriate weight in the Commission's consideration of this matter.

LIST OF COMMISSION RESEARCH PUBLICATIONS TO DATE

The following list of Research Publications prepared for the Commission may be obtained at the Ontario Government Bookstore in Toronto, or by mail order through the Publications Centre, 880 Bay Street, 5th Floor, Toronto, Ontario M5S 1Z8. Further titles will be announced upon their completion.

- 1 The Freedom of Information Issue: A Political Analysis
by Donald V. Smiley, Professor of Political Science
York University, Toronto, Ontario
- 2 Freedom of Information and Ministerial Responsibility
by Kenneth Kernaghan, Professor of Politics and Administration
Brock University, St. Catharines, Ontario
- 3 Public Access to Government Documents: A Comparative Perspective
by Donald C. Rowat, Professor of Political Science
Carleton University, Ottawa, Ontario
- 4 Information Access and The Workmen's Compensation Board
by Terence G. Ison, Professor of Law
Queen's University, Kingston, Ontario
- 5 Research and Statistical Uses of Ontario Government Personal Data
by David H. Flaherty, Professor of History
University of Western Ontario, London, Ontario
- 6 Access to Information: Ontario Government Administrative Operations
by Hugh R. Hanson, with the assistance of
Francine Latremouille and Susan Rowland

